RETALIATION AT THE DEPARTMENTS OF DEFENSE AND ENERGY: DO ADVOCATES OF TIGHTER SECURITY FOR U.S. TECHNOLOGY FACE INTIMIDATION?

HEARING

BEFORE THE

COMMITTEE ON GOVERNMENT REFORM HOUSE OF REPRESENTATIVES

ONE HUNDRED SIXTH CONGRESS

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THURSDAY, JUNE 24, 1999

HOUSE OF REPRESENTATIVES,
COMMITTEE ON GOVERNMENT REFORM,
Washington, DC.

The committee met, pursuant to notice, at 10:30 a.m., in room 2154, Rayburn House Office Building, Hon. Dan Burton (chairman of the committee) presiding.

Present: Representatives Burton, Gilman, Morella, Shays, Ros-Lehtinen, McHugh, Horn, Davis of Virginia, McIntosh, Souder, Scarborough, LaTourette, Barr, Miller, Terry, Biggert, Ose, Ryan, Chenoweth, Waxman, Lantos, Wise, Owens, Mink, Maloney, Norton, Cummings, Kucinich, Tierney, Ford, and Schakowsky.

Staff present: Kevin Binger, staff director; Barbara Comstock, chief counsel; David A. Kass, deputy counsel and parliamentarian; Corinne Zaccagnini, systems administrator; Carla J. Martin, chief clerk; Lisa Smith Arafune, deputy chief clerk; Scott Feeney, professional staff member; James Wilson, chief investigative counsel; Michelle White, counsel; Phil Schiliro, minority staff director; Phil Barnett, minority chief counsel; Kenneth Ballen, minority chief investigative counsel; Michael Raphael, Michael Yang, and Michael Yeager, minority counsels; Ellen Rayner, minority chief clerk; Earley Green, minority staff assistant; and Andrew Su, minority research assistant.

Mr. BURTON. Good morning. A quorum being present, the committee will come to order. Over the past 2½ years, this committee has focused a lot on the People's Republic of China. We have looked long and hard at millions of dollars in illegal contributions that flowed from China to the Democratic National Committee. One month ago we heard Johnny Chung testify that the head of the Chinese military intelligence agency gave him $300,000, which he said could be given to the President's campaign, and we heard testimony that others were involved. If anyone ever had any doubts, it has now become crystal clear that there was a Chinese Government plan to illegally influence our elections.

This is a very serious issue. We have received no cooperation whatsoever from the Chinese Government. We asked them to let us travel to China to interview witnesses. They turned us down flat. They told us they would arrest us if we came over to China. We asked them to give us bank records from the Bank of China to

show where the money came from. They gave us nothing. We asked the Clinton administration to help us through diplomatic channels, but they haven't lifted a finger. The President has had three summit meetings with Chinese leaders over the past 2 years, and he has yet to put any pressure on them to explain what they did.

But this isn't the only issue that we have with China. We have some very difficult national security problems as well. A few weeks ago, the Cox committee report came out. It revealed for the first time how extensive China's espionage has been against our nuclear weapons labs. China's thirst for our technology is not limited to nuclear bombs. They have also engaged in a massive effort to acquire sophisticated U.S. technology to modernize their military, everything from supercomputers to milling machines to aircraft technology. Sometimes they do it in an above the board manner; just as often they do it illegally through front companies and with phony end users.

It is pretty obvious that China has taken a very adversarial approach toward the United States. The question now is, what have we done about it? Unfortunately, when you look behind all of the spin and the PR, the answer is, not very much.

Today we have three witnesses from the Department of Defense and two from the Department of Energy. They have several things in common. First, they are all career civil servants. They are not political appointees. Second, they have all served across more than one administration, both Republican and Democrat. Third, they have all worked very hard to try to safeguard sensitive U.S. technology from foreign adversaries or potential adversaries.

Fourth, they have all had to fight with entrenched bureaucracies to do their jobs. Finally, they have all suffered retaliation and damage to their careers for trying to do the right thing.

Two of our witnesses, who brought serious problems in their agencies to light, have been accused of violating security rules. In my opinion, this appears to be harassment, pure and simple. One of them is Lt. Colonel Edward McCallum of the Energy Department. Colonel McCallum is the Director of the Office of Safeguards and Security. He is in charge of security at all of the Energy Department's nuclear facilities. He has held that position for 10 years. He has worked on security within the Department of Energy for over 20 years. He is a decorated Vietnam war veteran.

I think the record will show that nobody has fought harder to try to improve security at the Department of Energy labs than Colonel McCallum. He has written report after report pointing out the weaknesses. Year after year, he has fought internal battles to try to fix the problems. During the Bush administration there were security problems. Colonel McCallum testified before the Dingell committee in 1989. He criticized the Department. After he testified, he was called into the Under Secretary's office. Was he punished? Was he threatened? No. They put him in charge of the Safeguards and Security Office and told him to fix the problems that he brought up. He was told to meet with the Under Secretary every week to keep him up-to-date. There was still bureaucratic resistance, but at least he was getting high level support.

During the Clinton administration, things changed. Secretary O'Leary decided to open up the labs and make them more acces-

sible. The number of foreign visitors doubled. Security then took a back seat. Colonel McCallum's office lost any semblance of control over foreign scientists at the labs. Secretary O'Leary placed a new level of bureaucracy between McCallum's office and the high level decisionmakers he used to report to. According to Colonel McCallum, his relationship with upper management became adversarial.

On April 16, Colonel McCallum was invited to testify before the Rudman Commission about the problems at the labs. Three days later, he was handed a memo by the Assistant Secretary of Energy putting him on administrative leave. She accused him of disclosing classified information, which is a devastating accusation when you have to work with classified information every day. It is a career ender.

Now I am not going to get into the substance of what he is accused of disclosing. I am going to ask other Members to do the same thing. Until this dispute is resolved, I think it would be prudent to stay away from the substance of the issue. However, in my view, this smells rotten.

This looks like retaliation against someone who has been a tough critic of the Department for years. I want to just list a few reasons why this looks so fishy to me.

First, there is a long history at the Energy Department of retaliating against whistleblowers by threatening their security clearances. John Dingell, when he was chairman, held a number of hearings on this when he was the chairman of the Commerce Committee. Let me quote you what he said way back in 1984 on this very subject. This is Chairman Dingell speaking.

> This is an insidious time of harassment because it threatens the very livelihood of an employee. It also dampens the will of the employee to be honest with their supervisors and to be honest with the Congress of the United States. It is clear that without a Q clearance, you are out of a job in defense programs at the Department of Energy.

Second, if someone is suspected of revealing classified information, there is a procedure that has to be followed. It must be followed. It is spelled out in great detail in the Code of Federal Regulations. The employee has a right to a hearing. He has a right to a lawyer and to present evidence. The Department would not do this. They broke their own rules, so Colonel McCallum could not get a fair hearing.

Third, the first thing the Department is supposed to do is ask the Office of Classification to review the material and determine whether it is classified or not. Again, they did not do this.

Fourth, we asked the Department of Energy to cooperate with us as we looked into this. They haven't. We asked to meet with the two people who met with Colonel McCallum and put him on administrative leave. The Secretary has refused to let them meet with us. We sent them a subpoena for documents. It was due over a week ago. They have not complied. This is unacceptable. Although the Secretary of Energy is a friend of many of us in Congress, I am seriously considering moving a contempt citation against him if we don't get the documents we asked for and to which we are legally entitled.

One of the things I have learned is that when people refuse to cooperate with a congressional investigation, there is usually a reason, and it is usually not a good one. I find this all very disturbing. This is a Department that left Wen Ho Lee on his job with his security clearance for 18 months, after the FBI said there was no reason to do so. But Colonel McCallum has been fighting for tougher security for years, and he is getting pushed out of his job without so much as a hearing. We are going to hear from Colonel McCallum today and we are going to continue to try to get to the bottom of this.

We also are going to hear from three witnesses from the Defense Department. They have been involved in the review of export licenses for dual-use technologies; that is, technologies that are controlled because they have a military use as well as civilian use. They are not political appointees. They are career civil servants. They are nonpartisan experts in their fields. They will each testify that they have tried to stop the export of sensitive technology to Communist China and other countries. They will describe how they have been run over rough-shod by a system geared to get licenses approved with as little opposition as possible.

Dr. Peter Leitner is one of these experts. Dr. Leitner will testify that he opposed the export of sophisticated computers to India that they could use in their nuclear program. He was overruled. He opposed the export of aircraft engines to Communist China, engines that could be modified for using in their Silkworm missiles. He was overruled. He opposed the sale of machine tools from a McDonnell Douglas plant to China because he was afraid they would be diverted to a military facility. He was overruled. He learned later that the machine tools did wind up in a military facility. There is now a criminal investigation under way regarding that.

According to Dr. Leitner, every time he opposed a license, his bosses grew more and more frustrated with him. Then earlier this year, he too was accused of a security violation under very questionable circumstances. Does this sound familiar? Dr. Leitner has filed a whistleblower complaint to defend his reputation.

One of Dr. Leitner's colleagues will also testify. Michael Maloof also has been swimming against the tide trying to stop sensitive technology exports to Communist China. His career has also suffered. We will also hear from Jonathan Fox. He is an attorney in the Defense Special Weapons Agency. He was asked to write a position paper on whether China should be certified as a nuclear nonproliferator. That means not giving nuclear weaponry to other countries. This decision had important consequences. If China was certified, they would be eligible to receive civilian technology from the United States, technology that also had military uses.

There was also a lot of pressure because this was happening 1 week before the President's first summit meeting with Chinese President Jiang Zemin. Mr. Fox is an expert in this area. He certified that China is a nuclear proliferator, giving weapons to other countries. He wrote a memo that said they were giving these weapons to other countries. He was forced to rewrite his memo under duress to say just the opposite. He testified that he felt his job was threatened. I want to have a copy of the memo put up on the

screen, because I think it is important that my colleagues see what happened.

You will note in the margins some handwritten notes which directed him about what things to take out of that memo so that it would look like China was not involved in the proliferation of nuclear weapons. You can see there the big line drawn through it. The material that was slashed out showed very clearly that China was involved in the proliferation of nuclear weaponry.

Now, the facts are the facts. If China is a proliferator, then no one in the civil service should be told they have to write a position paper saying that they are not. There is absolutely no reason for Congress to pass a law requiring the administration to make a certification if they are going to just ignore the facts. If experts in their fields are going to have their careers threatened for telling the truth, then there is something seriously wrong. That is what we are here to find out about.

We are going to have one final witness from the Energy Department, Mr. Robert Henson. We are going to hear him in closed session at the end of the hearing because of some security concerns. But, again, he is another witness who believes that he was punished because of what he said.

There are two very serious things going wrong here. First, experts in their fields are being ignored on some very serious issues and our national security is being threatened as a result.

Second, the experts who are fighting to do the right thing are being punished for their efforts to try to protect this country. These five people who are going to testify today are risking a lot. They are already unpopular at their agencies. Their careers have already suffered. I am going to be watching what happens after this hearing very closely. If there is even a hint of retaliation because they came here today and told the truth, this committee will not stand idly by. People will get subpoenas, they will be called before the committee, and they will be put under oath to explain if there was any retaliation and why it happened.

People who have followed this committee's work know I have not been shy about issuing subpoenas in the past and I shall not be in the future. What we are talking about here is defending ourselves against Chinese espionage and stopping the transfer of military technology to a Communist regime that is very unpredictable. We don't know what the future holds, so that is why this is important. I won't stand for people being punished and intimidated for coming before the committee and telling us what they know.

I ask unanimous consent that all Members and witnesses' opening statements be included in the record. Without objection, so ordered. I ask unanimous consent that questioning in this matter proceed under clause 2(j)(2) of House rule XI and committee rule XIV in which the chairman and ranking minority member allocate time to Members as they deem appropriate for extended questioning, not to exceed 60 minutes, equally divided between the majority and minority.

Without objection, so ordered.

With that, I yield to my colleague from California, Mr. Waxman.

[The prepared statement of Hon. Dan Burton follows:]

Opening Statement
Chairman Dan Burton
Committee on Government Reform
June 24, 1999

Good Morning. Over the last two-and-a-half years, this Committee has focused a lot on China. We have looked long and hard at millions of dollars in illegal contributions that flowed from China to the Democratic National Committee.

One month ago, we heard Johnny Chung testify that the head of China's military intelligence agency gave him $300,000, which he said could be given to the President's campaign. And we heard testimony that others were involved as well.

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A few weeks ago, the Cox Committee report came out. It revealed for the first time how extensive China's espionage has been against our nuclear weapons labs.

China's thirst for our technology isn't limited to nuclear bombs. They've also engaged in a massive effort to acquire sophisticated U.S. technology to modernize their military — everything from super-computers to milling machines to aircraft technology. Sometimes they do it in an above-the-board manner. Just as often, they do it illegally, through front companies, and with phony end users.

It's pretty obvious that China has taken a very adversarial approach towards us. The question now is, 'what have we done about it?' Unfortunately, when you look behind all of the spin and PR, the answer is "not very much."

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- Second, they've all served across more than one Administration — Republican and Democrat.
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Department of Energy

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I want to have a copy of the memo put up on the TV screens.

Defense Special Weapons Agency
6801 Telegraph Road
Alexandria, Virginia 22310-3398

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OCT 23 1997

FMA

Keep

MEMORANDUM FOR OSD/ISP/N&I (MR. MICHAEL JOHNSON)

SUBJECT: Review of Reciprocal Arrangement with People's Republic of China

Keep

In 1985, the US and China negotiated an Agreement for Cooperation in the Peaceful Uses of Atomic Energy. As part of the implementation of this agreement, Congress mandates that the President must certify that any reciprocal arrangements concluded thereunder must be designed to effectively ensure that any nuclear materials, facilities or components provided under this agreement be utilized solely for peaceful purposes. Congress has also determined that arrangements concerning information exchanges and visits negotiated under this agreement will be deemed "subsequent arrangements" pursuant to section 131a of the Atomic Energy Act of 1954, as amended, and subject to the required findings and determinations defined therein. As the parties to this agreement are both nuclear weapon states, diplomatic channels establishing mutually acceptable information exchange and visit arrangements are utilized in lieu of bilateral safeguard provisions.

Keep

The United States and China have negotiated an information exchange and technical cooperation reciprocal arrangement which conforms to the definition of a "subsequent arrangement". Pursuant to Sec 131 of the Atomic Energy Act (42 U.S.C. Sec. 2160), the Department of Energy has requested consultative review of this proposed implementing arrangement in compliance with the provisions of the Nuclear Non-Proliferation Act of 1978. This memo is provided in accordance with the provisions of DSWA Instruction 5100.40 (which governs the agency response to such requests), and details the results of our technical assessment to the Office of Secretary of Defense.

Keep

The terms of the reciprocal agreement are relatively simple and direct. The U.S. and China will be afforded annual opportunities to: send technical experts to each others' civil reactor sites; observe operations and reactor fueling; exchange and share technical information in the operation and maintenance of nuclear power generative and associated facilities; exchange detailed confidence-building and transparency information on transfer, storage and disposition of fissionable fuels utilized for peaceful purposes; and disclose detailed reactor site operational data, to include energy generated and loading.

Keep

Section 131 of the Atomic Energy Act and related legislation

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requires a thorough inquiry into such arrangements. The inquiry must address whether the contemplated state action will result in a significant increase of the risk of nuclear weapons technology proliferation. It must also consider whether the information and expertise shared under the proposed reciprocal arrangement could be diverted to a non-nuclear state for use in the development of a nuclear explosive device, and whether the US can maintain an environment where it will obtain timely warning of the imminence of such diversion. This process concludes with a critical judgement, both objective and subjective in nature; namely, in light of the answers given to the two preceeding questions, would the arrangement as proposed not be inimical to the common defense and security?

This assessment concludes that the proposed arrangement presents real and substantial risk to the common defense and security of both the United States and allied countries. It is further found that the contemplated action can result in a significant increase of the risk of nuclear weapons technology proliferation. This assessment similarly concludes that the environment surrounding these exchange measures cannot guarantee timely warning of willful diversion of otherwise confidential information to non-nuclear states for nuclear weapons development. Concurrently, the agreement, as presented, cannot ensure that whatever is provided under this reciprocal arrangement will be utilized solely for intended peaceful purposes.

This assessment cannot be unmindful of the political importance attached to this reciprocal agreement. The very nature of this contemplated arrangement requires examination of the past state practices of the prime beneficiary of what is, in final analysis, a technology transfer agreement swaddled in the comforting yet misleading terminology of a confidence-building measure. Unarguably, the People's Republic of China benefits most from what technical information will be generated by these exchanges.

The post-Cold War era has given the People's Republic little pause for reflection on the wholesale rejection of Marxism. It remains committed to a discredited creed. The political hierarchy retains power through draconian measures, with little heed to global revulsion at the excesses imposed upon its' own people. It maintains an expansionist foreign policy, and openly covets the reacquisition of now independent territories. It is in the midst of a decade long military modernization program which has as an ultimate goal the achievement of undisputed power projection capabilities. China maintains an active nuclear weapons development program, and an equally energetic foreign intelligence service. Long hampered by an industrial and technological imblance with the West, it now seeks to redress that balance through industrial, academic and military espionage. China routinely, both overtly and covertly, subverts national and multilateral trade controls on militarily critical items. It has

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repeatedly violated international patent protection conventions to which it has given its' solemn word to uphold, and in the process developed an entire burgeoning domestic economy segment devoted to reverse engineering. In order to maintain influence among a patchwork of remaining ideological allies, China continuously violates international legal and political arms control and non-proliferation regimes through a healthy trade in offensive military capabilities easily modified for nuclear payloads. Within our own country, covert activities by this erstwhile partner to influence domestic political decisions through bribery and influence-peddling are the subject of numerous administrative, legislative and criminal investigations.

In short, we have negotiated a technical exchange agreement concerning critical nuclear technology with an aggressive and ambitious proliferant state unrestrained by political or moral considerations, and which discards diplomatic undertakings with studied regularity. Ambiguities and disagreements under this proposed reciprocal arrangement are, by its' very terms, to be resolved by diplomatic means. In light of past state practice demonstrated by the People's Republic, this is at best a chimerical safeguard against abuse. Chinese actions within the past year, contemporaneous with the negotiation of this agreement, continue to be so constantly agregious as to belie any disclaimer of past behavior.

Accordingly, unless there exist definite, meaningful verification provisions engrafted upon this diplomatic agreement, there is no practicable way of determining or enforcing adherence to the admittedly peaceful goals enumerated within the proposed reciprocal agreement. Without such bilateral undertakings or unilateral safeguards, the proposed measure presents such significant degree of risk as to be clearly inimical to the common defense and security.

This finding is deeply regretted, but necessitated by the documents presented for review and the past state practice of the People's Republic of China. Please feel free to contact me if you should desire further discussions in this regard.

JONATHAN D. FOX
Export Control Affairs

D. Callaway

OCT-24-87 10:57 FROM: ID:7035937812 PAGE

SHHD
~~SUBJECT: Chinese-American Reciprocal Agreement~~

Given that the 1987 MOU between the United States and China o: this subject provides for:

1. The right to obtain information required to maintain an inven of all U.S. supplied items, and of material used in or produced through the use of such items;
2. The right to confirm periodically, on-site, the accuracy of the inventory and the specified peaceful use of all items on this inventory;
3. The right to obtain this information, and to conduct on-site confirmation of this information, for as long as any such inven items remain in China or under its control.

Insert a, noted

The Defense Special Weapons Agency determines that the proposed Agreement is not inimical to the common defense or the security of the United States.

Dr. Gallaway's Sig. Block

~~Gary L. Curtin~~
~~Major General, United States Air Force~~
~~Director~~

To John Fox
Call Mike Ash.

Look at all of the material that is just slashed out.

Now, the facts are the facts. If China is a proliferator, then noone in the civil service should be told that they have to write a position paper saying they aren't. There is absolutely no reason for Congress to pass a law requiring the Administration to make a certification if they are going to just ignore the facts.

And if experts in their fields are going to have their careers threatened for telling the truth, then there is something seriously wrong — and that's what we're here to find out.

There are two very serious things going wrong here.

First, experts in their fields are being ignored on some very serious issues — and our national security is being threatened as a result.

Second, the experts who are fighting to do the right thing are being punished for their efforts.

These five people who are going to testify today are risking a lot. They are

already unpopular at their agencies. Their careers have already suffered. I'm going to be watching what happens after this hearing very closely. If there is even a hint of retaliation because they came here today and told the truth, this Committee will not stand idly by. People will get subpoenas, they will be called before the Committee, and they will be put under oath to explain themselves. People who have followed this Committee's work know that I have not been shy about issuing subpoenas in the past, and I will not be in the future.

What we are talking about here is defending ourselves against Chinese espionage, and stopping the flow of military technology to a Communist regime that is very unpredictable. So I won't stand for people being intimidated when they come before this Committee and tell us what they know.

I now yield to Mr. Waxman for his opening statement.

Mr. WAXMAN. Thank you very much, Mr. Chairman. I have especially strong feelings about the rights and proper treatment of whistleblowers. Government and corporate whistleblowers are often courageous individuals who risk everything they have, simply because they want to do the right thing, and they have been responsible for providing key information in many important recent investigations. We have a responsibility to protect these brave men and women.

There have been, of course, whistleblowers who amounted to little more than malcontents, cranks, or employees who were incapable of doing a competent job. In other cases, the seemingly scandalous story a whistleblower initially tells turns out not to involve corruption or cover-ups, but simply an honest policy disagreement between subordinate and supervisor. Since reputations can instantly be destroyed in these fights, most Members of Congress tend to be very careful in these situations and painstakingly sort through all the facts before reaching conclusions.

I think Members of Congress should be especially sensitive to the details in these cases, because we all inevitably face situations in which we disagree with our staff's recommendations. We have all had to choose between our staffs' conflicting recommendations. I recall many circumstances where I have had staff people come in, argue opposing points of view, and I have to make a judgment. I wouldn't want those with whom I eventually disagreed to then go out and say that there was some wrong motive on my part because I disagreed with them.

In all of these cases, it would be easy for one disgruntled staff member to accuse any of us of making a decision for the wrong reasons and for our integrity to be questioned.

So our job today is to sift through the testimony we receive and reserve judgment until we have all of the facts.

I do want to note, however, that based on what I know so far, I am particularly troubled by the treatment Mr. McCallum has received. If it turns out that he or any of the other witnesses have been the target of retaliation intended to intimidate them from doing their job competently and honestly, I will ask the chairman to join me in putting an immediate stop to those tactics and to take whatever steps are necessary to make sure it doesn't happen to others.

I want to welcome our witnesses to the committee. I look forward to listening to their testimony. Thank you, Mr. Chairman. I yield back my time.

Mr. BURTON. Thank you, Mr. Waxman. I would ask any other Members that have opening statements to put them in the record, with the exception of the chairman of the International Relations Committee, who has a brief statement.

Mr. GILMAN. Mr. Chairman, I want to thank you for holding this timely hearing today dealing with both the reluctance of the Department of Defense and the Department of Energy, to hear the truth from career professionals about possible nuclear espionage and current concerns about the lax security in their procedures. I am gratified and saddened by the report of the Cox Select Committee on United States National Security and Military Commercial Concerns with the People's Republic of China and the courage

of our Nation's career professionals working at both the Departments of Defense and Energy.

The advances in nuclear weapons and ballistic missiles that China will reap from their acquisition of American science and technology directly undermines our fundamental national security. Regrettably, the administration's response to this threat to our national interest has been at best anemic. The Congress has a great deal of work to do to rectify those problems that have been identified by the Cox committee.

Moreover, we are extremely concerned with the retaliation which has been allowed to take place in both the Departments of Defense and Energy upon our career professionals. If it were not for these professionals, we may never have known the truth about nuclear espionage and the current lax security that still exists today.

I look forward to working with our colleagues on this committee and with the gentleman from Pennsylvania, Mr. Weldon, on legislation to protect our career professionals, working to protect our Nation's national security. Hopefully the administration will fully cooperate with the Congress in addressing this most distressing and regrettable chapter in our Nation's history.

Thank you, Mr. Chairman.

Mr. BURTON. Thank you, Mr. Chairman. We will now ask our first witness, Representative Curt Weldon, who served on the Cox committee and who has done yeoman's service for this country, to come forward. Congressman Weldon, we appreciate your hard work, your diligence, and your concern about our national security. We welcome you here today. You are recognized for an opening statement.

STATEMENT OF HON. CURT WELDON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF PENNSYLVANIA

Mr. WELDON. Thank you, Mr. Chairman. I would ask unanimous consent to put my statement in the record.

Mr. BURTON. Without objection, so ordered.

Mr. WELDON. I would just like to speak to my colleagues and friends from the heart, because I have been involved with each of the cases you are going to hear today in one way or another over the past several years. I think it is most important that I convey to you in a very personal way my concerns.

I appreciate the comments of the distinguished ranking member, Mr. Waxman. I know his integrity, and I share his concerns that before we draw conclusions we should get to the bottom of each individual case and see what the true facts are. I share that sentiment totally.

Mr. Chairman, let me say at the outset that I have been in Congress for 13 years and have served on the National Security and Armed Services Committee. It has been an area I have tried to specialize in. Defense and security in this Congress has been and is a bipartisan issue. I am proud of the fact that in the 5 years I have chaired one of the two most aggressive National Security subcommittees, Military Research and Development—with 28 Members of Congress, we have never had a dissenting vote in 5 years. I take great pride in the fact that when we do things on security

issues, they are bipartisan. We look at these issues in a way of working together.

As you will hear me explain today, two of the cases you are going to be confronted with are in fact being worked in a bipartisan way by Members of both parties. These issues are serious issues and they reflect national security concerns and must be looked at.

I want to make one other comment, Mr. Chairman. The whole issue of whistleblowers coming forward is not new. It is not something that just suddenly arose in the past several years. I can remember in the first several terms that I served in Congress, there were people in the Pentagon who came to us both quietly and before congressional committeess to tell us about illegal expenditures, inappropriate activities, and investigations that were not properly dealt with. That was as serious then as it is today. So this hearing should not be looked at as something that just occurred.

This an issue that needs to be dealt with. You are going to hear stories today from the witnesses and others that I will discuss that involve people with classified status. I want you to keep in mind the protections available to employees of the Federal Government who are not in classified status, are not necessarily available to those employees who serve in a classified position. That is extremely unfortunate. I would ask this committee, because it is your oversight, to look at ways that we can protect these employees.

The stories you are about to hear I think are from great Americans. They are from people who are dedicated professionals. I don't know whether they are Democrats or Republicans or even registered. But I know the quality of their work. In fact, in my job as the chairman of the Subcommittee on Military Research and Development where I have to be able to assess the emerging threats to us, and then allocate where the dollars are going to meet those future threats. We work in a bipartisan way with the professionals in the CIA, the DIA, DOE intelligence, the NSA and all the other security operations to make sure that we are getting the best information to be able to assess accurately whether or not we are putting dollars in the right place, whether the emerging threats are in fact where we are putting the dollars we have. That is especially important in this day and age when defense dollars are shrinking so rapidly. So it is critically important that we understand that people need to be able to give us honest, professional assessments without fear of retaliation, without feeling that their examination and professional judgments must fit with some predetermined policy conclusion. I don't care whether that policy conclusion is from a Republican President or a Democrat President. Unfortunately, you are going to hear some stories today, and some others I am going to ask you to followup on, that I think present some very real challenges for us. We need to understand the concerns that people have.

You are only seeing the tip of the iceberg. I will give you the outline of perhaps 8 or 10 cases. I can tell you there are scores more. I will tell you of some of the attempts that we made on the Cox committee to talk to other employees with similar concerns. As you know, I also served as one of the nine members of the Cox committee, another totally bipartisan effort. We worked hard. The Democrat members who worked on that committee were absolutely

totally effective, equally effective to the Republicans, because national security was at stake. But there were some concerns raised during our investigation that you need to be aware of, that we couldn't deal with in the Cox committee that this committee perhaps can deal with.

Let me just go through several of the examples, Mr. Chairman, before you call up your expert witnesses.

I want to talk first of all about how this whole process came about. Five years ago, when I took over the R&D subcommittee, I felt we would work in a strong bipartisan way to assess emerging threats. I involved my ranking members, Owen Pickett and John Spratt, in every meeting, threat assessment briefing we had. A couple of patterns started emerging relative to Russia, and the threats that we saw increasing in Russia because of the instability within Russia.

I came to meet a DOE career employee whose name is Jay Stewart. Jay is in the audience today, Mr. Chairman. He is not a witness, but he will make himself available to come in. His career has been basically, I don't know whether he will agree with this, but I think ruined because of simply doing his job.

Now, Jay served as a professional in the Department of Energy intelligence operation for 16 years. He was given the highest award that is given by this Government to a career intelligence employee, the highest award. He was recognized for his expertise as a foreign intelligence officer in assessing the stability of Russia's nuclear stockpile, of assessing Russia's nuclear program, and whether or not the internal turmoil in Russia should cause us to be concerned because that increasing threat might eventually be used against us or that technology might be transferred to a rogue state or a nation that perhaps is not necessarily a friend of ours.

Jay headed up a program called Russian Fission. In December 1992, he led a classified conference on this subject matter which was widely attended by military intelligence and policy communities. In fact, when Hazel O'Leary came in in 1993, he briefed her in February. He was asked then to go over to NATO and to personally brief the Secretary General of NATO, Manfred Woerner, which he did. Manfred Woerner was so concerned, but impressed, with what Jay's briefing was about, that he sent a classified cable back to the State Department which this committee can access. It is available, I will give you the citation, which shows Manfred Woerner's concern as the head of NATO about what Jay Stewart's operation was telling him.

A short time after Jay briefed Manfred Woerner, he was approached by a new appointed Director of DOE's Office of Intelligence and Arms Control, Jack Keliher. This was a political appointee. All papers, briefings, agendas, conference video and audiotapes from that conference involving Jim Schlesinger and intelligence agents from the CIA, DIA, and intelligence community were seized, locked up, and shredded. We have the name of the person who shredded them, who said that publicly. Keliher said the Secretary told him, the program Russian Fission was "politically sensitive" and could "embarrass the President." He further went on to say, "If any materials from the National Defense University Conference which Jay Stewart ran were ever leaked to the press, some-

body would be fired." He then said Jay Stewart's work was "ill informed," contained "inaccurate assumptions and conclusions," and could not be referred to because it "gave the wrong impression of the situation in Russia."

That may be the case, as Mr. Waxman said, but somebody needs to look at why Jay Stewart's materials were shredded, why information relative to this classified conference were basically taken away so that a proper analysis could not occur.

Jay was an outstanding career employee of Energy. He eventually lost his job, he was shifted over, in spite of having been given the National Intelligence Meritorious Unit Citation, the Presidential Meritorious Executive Rank Award, and ultimately the National Intelligence Distinguished Service Medal, the highest award an intelligence officer serving this country can get.

I tried to get an Armed Services investigation of this several years ago when Jay first approached me. Unfortunately, the Department of Energy found out about that, in my own opinion and in comments brought to me by some employees. There was a meeting within DOE to kind of circle the wagons and get a uniform response, which may have been the correct response, I don't know that. I can tell you three brave DOE employees, and I will give you their names, who corroborated everything Jay Stewart said.

If you have read the book "One Point Safe" by Andrew and Leslie Cockburn, one of the chapters in there documents the work by Jessica Stern, one of our key nuclear experts in this administration and previous administrations. She too documents what Jay Stewart has said.

Mr. Chairman, someone needs to get to the bottom of the Jay Stewart case. I want to publicly acknowledge Jay Stewart. He is in the back of this room, if any of you would like to meet him. He is not testifying today because your focus is on China, I understand that, but I would ask you to followup on Jay's case because it is something worthy of consideration by this committee.

I followed up in my own committee by having Russians come in. I first of all had Brookings scholar Bruce Blair. I had a leading Russian environmental activist, Alexi Yablokov, a personal friend of mine, testify in Congress. I had General Alexander Lebed, who is currently the Governor of Krasnoyarsk, and former KGB agent Stanislav Lunev, each come in before my committee and testify. They all corroborate the concerns in Russia that Jay Stewart was trying to warn us about before his operation Russian Fission was basically eliminated and done away with. By the way, one of Jay's assistants during that early process was none other than Notra Trulock.

Mr. Chairman, the second case I would like to talk about is a national intelligence estimate which focused the debate of this country on emerging missile threats to America in 1995. You may remember there was a lot of contention about whether or not we faced a threat to our own security at home by a rogue nation such as North Korea. I asked for an intelligence estimate, along with at that point the head of BMDO, General Malcolm O'Neill. For a year, we pressed the CIA to give us that assessment.

For the first time we know of, and this was documented by the General Accounting Office in a study we had done, the CIA did not

go through its normal pattern of releasing a national intelligence estimate. They leaked the result to two Members of the Senate for use in debate on the Senate floor before the report was complete. Those two Senators, who are opposed to missile defense, used that report as the basis for voting against the national defense authorization that year, which was 1995. The President then directly referred to that report when he vetoed the national defense authorization in 1995. For 3 years that report became the basis of the assessment of threats to the United States in terms of long-range ballistic missiles.

We were livid, Democrats and Republicans on the committee, because we knew that the CIA was not looking at the instability in Russia and we called into question the process they used. The GAO confirmed in a written report that the process they used for that NIE was not like any other process that had been used for an intelligence estimate. Certainly the way they released it, in a political forum, we never release NIEs. That is a classified document. In this case it was released.

We then as a Congress in a bipartisan vote convened the Rumsfeld Commission, 5 appointees of the Republicans, 4 appointees of the Democrats, including the former CIA Director under Bill Clinton, Jim Woolsey. They met for a year. They analyzed what the CIA had done. Their conclusion was unanimous. Just like the Cox committee, it wasn't 5 to 4, 7 to 2, it was 9 to 0, including opponents of missile defense on that panel. They all said the CIA was way off base, that that report was incorrect, that the threat from North Korea was here today. We saw that verified last August 31 when North Korea shot off the Taepo Dong I three stage rocket over Japan, which now the CIA publicly acknowledges can hit America, right now today. The CIA, in an unprecedented event, Mr. Chairman, reversed themselves.

This was the basis of the debate in this country for 3 years over whether or not missiles were a threat to our security. This NIE, the CIA now admits that what was said in 1995 was incorrect. Bob Walpole, who heads strategic services on ICBMs for the CIA, now publicly acknowledged the threat is here today.

Because of that challenge of the CIA national intelligence estimates, the flood gates opened. People started to come to us on the Armed Services Committee expressing their frustration with the lack of ability of giving honest, open professional judgments about emerging threats.

One example: I focused on Russia, as many of you know, starting from the days that I graduated with a degree in Russian studies. I have been there many times.

I heard about a brief that was available through the Department of Energy intelligence services by a scientist at Lawrence Livermore Laboratory on continuing research work being done by the Russians on five technologies that they could break out with that could harm our security. So as the chairman of the R&D committee, I thought I better get this brief. I called the person working on this project for 7 or 8 years, in fact I will give you his name.

This individual, who is a scientist at Lawrence Livermore, had been working on this brief called Silver Bullets for a number of

years. His focus was on emerging Russian technologies that we needed to be aware of.

When I called him, he said, "Congressman, I would love to come back and brief Members of Congress." I said, "It is going to be bipartisan." He said, "No problem, I would love to do it." That was in July 1996. He said, "I will go through my chain of command to come back and brief you and let them know there is a formal request."

Mr. Chairman, I never heard anything. August 20, 1996, I got this letter. This is the envelope it came in. Postmarked 21 August 1996. Can I read the memo?

Mr. BURTON. Yes, sir.

Mr. WELDON [reads]:

Congressman Curt Weldon, 2452 Rayburn Building, House Office Building, Washington, D.C. Dear Congressman, as a concerned citizen, I hope that you will pursue the briefing with Dale Darling. Dale has been pressured to cancel the briefing. I would appreciate it if this note was kept confidential to your office. Thank you.

August 20, 1996.

I eventually got the brief, but you know how I got the brief? I had to hold this letter up in a hearing when Secretary of Defense Perry came before our committee and I had my 5-minute question time. I said Secretary Perry, I respect you, you are a good and decent man. Do you agree with Members of Congress being denied briefings on emerging threats coming from Russia? He said absolutely not, Congressman. I went on to explain this. Secretary Perry got us the approval 7 months after I requested it to have Dale Darling come in and brief Democrat and Republican Members of the House.

Dale Darling has been back several times since. We continue to engage him. We didn't use that material to go out and create some scare tactic with Russia, but it was important to the process of us understanding what is happening in Russia, that all is not rosy, that there are problems there.

Let me talk about a couple of CIA cases. These individuals are not here. One will not show because his career is still in jeopardy. He is a lifetime CIA agent, one of our experts.

He came to me because he has a relative that worked for me. He is an expert assigned to monitor our policy involving the U.S. involvement in peacekeeping missions. He was assigned to the panel that drafted the Presidential Decision Directive 25 dealing with the use of force in peacekeeping efforts. This analyst revealed to his superiors that an intelligence leak was occurring in Somalia that compromised United States security.

So he did what he was supposed to do. He said we have got to watch and be careful that we are not giving classified capability to the NATO countries that could eventually be leaked out and used against us. He was doing his job. He objected to what was being done, and instead of being praised for what happened, he was asked to submit to a drug test, a medical exam for brain tumors, and a psychiatric evaluation.

Mr. Chairman, I have heard of that kind of activity in Russia, where they used to charge people with crimes against the state and commit them to psychiatric institutions. I have never heard of a

professional intelligence analyst in this country being asked to undergo a psychiatric examination.

Ultimately it took a group of seasoned attorneys, whom I have met with several times, to bring an abrupt end to his harassment and ensure his exoneration, which has occurred today. This individual will come before your committee, but only under the conditions of his attorneys. I have given your committee staff his name and you know the process that this gentleman needs to go through. I want it to be bipartisan. This is not a partisan issue.

Another example, and this is something that every member of this committee understands. Remember when Benjamin Netanyahu told us that he had evidence that Israel had documents linking up the Russian Space Agency headed by Yuri Koptev and the Iranians on building medium range missiles? That was a major national headline in this country.

Well, we had been briefed in the Congress by the then Director of the CIA Nonproliferation Center, Dr. Gordon Oehler. He came over and briefed members of the Intelligence Committee, the International Affairs Committee, and the Armed Services Committee about Russia's involvement with Iran. He told us that this is a concern, because Iran is going to build a medium range missile that is going to threaten Israel. The Israelis were absolutely outraged over this, and so was Congress.

The distinguished gentleman from New York, Ben Gilman, along with Jane Harman, introduced a bipartisan Iran missile sanction bill. We went down to the White House twice. I was invited by Al Gore twice, once before the House vote and once before the Senate vote. There were 11 Members of Congress there, Senators and House Members. He pleaded with us not to have this vote come up on the floor. When he finished, I said Mr. Vice President, it is too late. The Congress feels we are not doing enough to stop the proliferation from Russia which Netanyahu and Gordon Oehler told us about.

The House voted 396 in favor of that bill, the Senate voted 96 to 4 in favor of it. The President's veto could have been overridden, but Speaker Gingrich didn't want to bring the bill to the floor in the September before the elections. A little known fact, but I was there with AIPAC when AIPAC was talking to the Speaker about the veto override. It was his choice not to bring the bill up.

But the point is Gordon Oehler had no intention of retiring. But when he told Congress about the cooperation between Russia and their space agency with Iran on the Shahab 3, which was supported by the Israeli Government publicly, which they knew about, he felt so much pressure that he took early retirement. Again, you might want to talk to Gordon Oehler, recognized in both parties, recognized by liberal arms control groups as an outstanding expert on proliferation. He felt the pressure because he was simply telling us in a private way about problems that were occurring with Russian technology transfers.

Mr. Chairman, let me get to Jack Daly. I work with the military all the time, I know my colleagues and friends have a high regard for our military personnel. Lieutenant Jack Daly has served a distinguished career in the Navy for 16 years. He is a Navy intelligence officer.

On April 4, 1997, he was flying in a helicopter on an intelligence mission with a Canadian pilot. They were monitoring Russian trawlers off the coast of Seattle that we felt were tracking our nuclear submarine fleet, and they knew these trawlers were not bringing cargo into ports or taking cargo out, so they were highly suspected of being there for intelligence gathering purposes for Russia.

In one of their missions on April 4, while flying over this one trawler, there was a flash of light from the trawler which was later found out to be a laser. Lieutenant Daly and the Canadian officer's eyes were damaged by a laser device being pointed at them in the helicopter. We don't know whether that laser was being used to detect the capabilities of that helicopter, and Lieutenant Daly can give you the reason, and he is willing to come before this committee, by the way. I met with him yesterday again. But the fact is we had a military officer who was personally harmed by a Russian vessel. I can tell you following Lieutenant Daly's incident there was an inspection. The inspection only took place in the public parts of that ship. Up until now and recently, we haven't been able to see the classified documents relative to what we did as a Nation to respond to Lieutenant Daly's problem.

If you read the book "Betrayal" by Bill Gertz, in the back of that book, and this is unfortunate that he did it, but Members need to understand he has released classified documents. The first four or five classified documents are the internal memoranda from Strobe Talbott and the current Ambassador for the United States in Moscow, Ambassador Collins, relative to Jack Daly's case. The highest level of our government knew the severity of the Jack Daly incident. What did we do? We went after Jack Daly.

Prior to this incident, he had received the highest commendation a Navy officer can receive in serving his country. On the following evaluation after this incident, he received one of the lowest commendation levels that can be garnered by a Navy officer.

Let me give you the quote of what his direct superior officer said to him in the course of following up on this laser incident, "You don't know the pressure I am under to sweep this under the rug."

Mr. Chairman, if that is true, that is not America. It is not America, if Navy personnel doing their job and protecting our people feel that when they come forward and they are injured personally, that they are going to be the scapegoat because of some larger policy issue.

Mr. Chairman, I can tell you that Jack Daly and the Navy officer who has never been talked to, never, are willing to come before your committee, and I would ask you to bring both of them in.

Mr. Chairman, in terms of the other witnesses you are going to have today, just a couple of comments, because I know their cases, a couple of them I am working with personally. I want to first of all acknowledge the distinguished work of our friends, both Fred Upton and from the State of Pennsylvania, my good friend Ron Klink. They have taken up the McCallum case, they have written Dear Colleague letters, they have written to Bill Richardson in a bipartisan way. They have asked, as Mr. Waxman has, for a full explanation of why Mr. McCallum has been treated the way he has.

I did a special order on Mr. McCallum several weeks ago, and something came to me through e-mail that kind of surprised me. I didn't ask for this, it just came to me. I know the fellow who wrote it, but it is surprising, because of all the pressure he has been under and the fact that he has really come out as a champion for the administration on cleaning up our labs. I would like to read the very brief e-mail to you.

This is about Ed McCallum's case.

Thank you for bringing attention to this miscarriage. I have worked with Ed for several years and have always found him to be professional in every way. The allegations against him by the Department are inexplicable. I have little doubt that the Department's actions are part of the broader pattern of harassment and retaliation against any and all whistleblowers concerned about national security issues. Sincerely, Notra Trulock.

Mr. Chairman, the McCallum case is an example of a system gone wrong. You are going to follow that up with the witnesses from DTSA, two outstanding people, Mike Maloof and Dr. Peter Leitner. These two individuals are career technical experts. Again, they are not partisan, they are not in favor of any one point of view. Their job is to assess technologies that come back to harm us.

If you question them, I ask you to ask Dr. Leitner, and they both testified before the Cox committee, if he ever had an incident where a recommendation he made in his computer was changed by someone above him while he was on vacation from a no recommendation to either a positive recommendation or another recommendation.

Ask him about the changes within the agency and the pressures brought to bear on them as professionals. Both Mike Maloof and Peter Leitner are outstanding employees.

Now, I can't verify all the accuracy of what they are going to say, but that is what this committee can do. I implore my friends on both sides of the aisle, this is not a partisan issue. These are security concerns. These need to be issues that we deal with because I don't care if the next President is a Republican or a Democrat. We need to have good solid intelligence information to deal with threats that we see emerging.

The other cases, I think, are of equal concern, the cases involving Livermore and the cases involving Los Alamos and the case involving Mr. Fox.

Mr. Chairman, I would just ask you and I would implore the distinguished ranking member and all of the members of the committee to work with us. I think there is some need for some legislative change. I will make two suggestions, and I am not a policy expert in this area. I will let you all decide how to handle it.

My understanding is that today, a Federal employee who has classified status, cannot take advantage of the Merit Systems Protection Board. They are specifically excluded because they are in a classified position.

One of the things I would suggest that you might look at is to ask the Merit Systems Protection Board to set up a separate process just for those employees who have classified intelligence status, to give them a means of going through a process to protect their rights.

Second, I would ask you to consider whether or not it is worthwhile that we put into place legislation requiring every Inspector General to establish an office of employee advocacy so there can be a separate office within the IG's office that would be an advocate for the employees. I can tell you, if you talk to the employees I mentioned here today, and the ones that are not here, they are going to tell you in some cases the IG's office do not and cannot do the job. Maybe it is time to put into place a separate internal entity in each IG's office just for employee's advocacy, especially for those who have classified status.

Mr. Chairman and Mr. Ranking Member, I thank you for your time. I appreciate the sincerity with which you are taking this hearing. I have tried to make this as bipartisan and nonpartisan as I can, because I want to continue to work with friends on both sides of the aisle to solve these problems. I say again, these problems have existed in previous administrations. Chairman Dingell did a fantastic job in previous years in exposing problems involving whistleblowers, and I have applauded him publicly for that. I would ask this committee to do the same. Thank you.

[The prepared statement of Hon. Curt Weldon follows:]

Testimony of Rep. Curt Weldon (PA)

before the

House Government Reform Committee:

National Security Politicization/Whistleblower retaliation

June 24, 1999

Thank you, Mr. Chairman. I welcome the opportunity to testify today -- not as a Republican looking for a target of opportunity to attack the Administration, but as a Member of Congress concerned about the politicization of national security matters and retribution against government employees who stood up against it. In fact, it was my efforts to bring bipartisanship to the national missile defense debate that brought me here today.

In 1995, the congressional leadership committed to passing legislation that would mandate the timely deployment of a national missile defense system. Unfortunately, that debate began on a highly partisan note -- bolstered by the President's repeated public insistence that the United States was no longer targeted by Russian missiles. Concerned about the Administration's attempts to downplay missile threats and the lack of alternative information on threats and systems to defend against them, I established the bipartisan Congressional Missile Defense Caucus with John Spratt, Peter Geren, and Duncan Hunter to educate members and the American public about the issues.

Through hearings and briefings, the regular distribution of materials, and in speeches across the country, I worked aggressively to increase awareness of threats and to counter misrepresentations that were being made. Soon, people were coming to update me on threat developments, asking that I follow through so that critical matters were not overlooked. Sadly, I also became a conduit for agency employees whose findings were being squelched by the Administration. That is how I first learned about the Administration's aggressive campaign of distortion -- when a former DOE employee came to my office in 1995 to discuss the deterioration of Russian nuclear security.

Jay Stewart

In 1991, Jay Stewart, Director of DOE's Office of Foreign Intelligence, commissioned a panel of DOE specialists to assess the control, safety, and security of Soviet nuclear weapons. Later that year, results indicating a loss of control were briefed to Secretary of Energy James Watkins, and the CIA. Stewart made continued monitoring of this urgent situation -- known as the "Russian Fission" program -- the office priority. In December 1992, he led a classified conference on this subject matter at the National Defense University [NDU], which was widely attended by the military, intelligence and policy communities.

Hazel O'Leary was briefed on this situation in February 1993, and asked that Secretary-General of NATO Manfred Woerner be briefed immediately. Suddenly, after marshalling the highest levels of support from the U.S. government and NATO, the program was terminated by the newly appointed Director of DOE's Office of Intelligence and Arms Control, Jack Keliher. All papers, briefings, agendas, conference video and audio tapes were seized, locked up -- and ultimately destroyed. Keliher said that the Secretary told him the program was "politically sensitive" and could "embarrass the President." He said that "if any materials from the NDU conference ever leaked to the press, somebody would be fired." He then said Stewart's work was "ill informed," contained "inaccurate assumptions and conclusions" and should not be referred to because it "gave the wrong impression of the situation in Russia."

Refusing to buckle under to political pressure and tow the party line, Stewart and his deputy were both removed from all DOE intelligence and management duties. Facing a future in dead-end positions, both quietly left DOE. Jay was an outstanding career employee of the Department of Energy, who worked his way up the ranks to serve as the First Director of Counterintelligence, and as Director of Foreign Intelligence. Among the many professional awards he received were the National Intelligence Meritorious Unit Citation, the Presidential Meritorious Executive Rank Award, and ultimately, the National Intelligence Distinguished Service Medal.

Concerned that the Administration would try to bury this information, and astounded by the lengths to which it went to dispose of the findings, I initiated an Armed Services Committee investigation of this matter. Most Department employees "circled the wagons," preventing us from obtaining physical evidence of politicization. However, Jay's story was ultimately corroborated by three brave DOE employees, and was later backed up in the book One Point Safe. I subsequently held several hearings in the Armed Services Committee on this matter which confirmed the validity of the Russian Fission effort -- including the testimony of Brookings Scholar Bruce Blair, Russian Academician Alexi Yablokov, General Alexander Lebed and former KGB agent Stanislav Lunev. The Stewart case was my first foray into Clinton Administration politicization of national security matters, and a stunning lesson in just how far this White House would go to bolster its own policy agenda. I still find it absolutely galling that someone of Jay Stewart's caliber, just doing his job, could be so effectively trashed by political appointees and run out of town.

National Intelligence Estimate 95-19:

Later in 1995, the Administration released , NIE 95-19 "Emerging Missile Threats to North America During the Next Fifteen Years." This assessment flatly ruled out a rogue missile threat to the U.S. for the next fifteen years. On December 1, as the Senate was debating the Defense Authorization bill which directed the deployment of a National Missile Defense, the Administration in an unprecedented move released a letter citing these conclusions. Two weeks later, President Clinton vetoed the Defense Authorization bill, stating that the Administration did not see a missile threat to the United States in the coming decade.

Previous intelligence estimates showed that threat could emerge much sooner, and many Members questioned assumptions in the classified assessment -- such as the exclusion of the missile threat to Alaska and Hawaii. I knew from my own monitoring of Russian security developments that the estimates ignored the disintegration of the Russian military and the breakdown of command and control. Given these doubts, my Committee tasked the GAO to evaluate the soundnes of NIE 965-19. GAO determined that its conclusions were overstated, and noted numerous analytical shortcomings in the report. Former Director of the CIA Robert Gates, who headed an independent review of NIE 95-19 said it was "politically naive" "rushed" and that the exclusion of Alaska and Hawaii from the threat analysis was "foolish from every perspective."

After pursuing the Russian Fission matter and the much more publicized NIE, Mr. Chairman, the floodgates literally opened. I was routinely hearing of developments -- that Congress should have every right to know about -- that the Administration was not likely to share. In too many cases, professionals who had the gall to press the point on matters that defied the Administration's "line" were being penalized. Each of these cases is every bit as compelling as those above. In the interest of time, I will try to summarize a few of them for the Committee's consideration.

Spooking the CIA: 2 Cases of Foul Play

#1 - Just as the Russian Fission investigation was wrapping up, I learned that one of my staffer's relatives -- an employee of the CIA -- was suffering undue harrassment after presenting analysis that conflicted with the Administration's policy governing U.S. involvement in UN peacekeeping efforts. Assigned to the panel drafting Presidential Decision Directive 25 dealing with use of forces in peacekeeping efforts, this analyst revealed to his superiors an intelligence leak in Somalia that compromised U.S. security.

After objecting to intelligence sharing in international peacekeeping efforts and opposing U.S. troops involvement in civil wars, he was pulled off the PDD panel and reassigned to a lesser job. Managers complained about his writing and analysis, and he suffered continued harrassment. After he requested binding arbitration, he was asked to submit to a drug test, a medical exam for brain tumors, and a psychiatric evaluation. Ultimately, it took a seasoned attorney to bring an abrupt end to the harrassment, and to ensure his exoneration.

#2 - When Gordon Oehler, Director of CIA's Nonproliferation Center, provided Congress with detailed information on the scope of the Iranian missile threat, he effectively ended his twenty-five year career. Members were pressing for details on Iranian threat developments, concerned about their implications for our troops and Middle East allies. At the time, the Administration was maintaining that an Iranian medium-range missile capability was a decade away. To his detriment, Oehler provided Members with candid details about technology transfers from Russia and China to Iran that vastly accelerated the Iranian missile threat. His revelations not only undermined the credibility of the Administration's threat assessment, but challenged its policy with respect to Russia and China. In my view, Oehler's greatest sin was not in arriving at these assessments, but in sharing them with a critical Congress.

Silver Bullets

As the Committee was conducting numerous threat assessment hearings in 1996, I was approached by some DOE lab employees who suggested that I should get a briefing on some startling Russian strategic developments that had recently come to light. Given the sensitive nature of this brief, I would have to request it first. When the Department became aware of my interest, it prevented the expert on this subject from coming to brief me. Soon, I received a 3 sentence, unsigned note urging me to pursue that briefing. Only after challenging the Department repeatedly was I able to get that briefing -- accompanied by agency message masters.

Jack Daly

On April 4, 1997, Lt. Jack Daly, a Navy intelligence officer serving on a joint U.S.-Canadian surveillance mission near Seattle, was shot in the eye with a laser beam while monitoring a Russian ship thought to be tracking our submarine fleet. The incident prompted a search of the ship days later, but our State Department provided twenty-four hour warning of the investigation which may have enabled the removal of the laser equipment. Only public areas were allowed to be searched.

Because this incident was perceived to be a potential stumbling block in our relations with Russia, it was kept secret for weeks and efforts were made within the Defense and State Departments to cover it up. The State Department never issued a formal demarche. The Canadian pilot, also injured by the laser, was never interviewed. This was not some low-level affair - it was discussed in the White House and involved National Security Assistant Bob Bell and Undersecretary Strobe Talbott. Daly's superior told him "You don't know the pressure I am under to sweep this under the rug." Fortunately, the story was broken by Washington Times reporter Bill Gertz, who exposed more details about it is his recent book Betrayal. While no acknowledgement has been made to this day that the Russians attacked a U.S. military officer, the fleet monitoring ships was ordered to wear eye protection against lasers. When he wrote me pressing for further investigation of this matter, Daly suffered professionally for pursuing this matter. Prior to the incident, he had received his highest rating for promotion ever. After the incident, that rating was reversed, and it became the worst evaluation of his career. He is now approaching his second review for promotion - and his career hangs in the balance. Mr. Chairman, I ask that you bring Lt. Daly and the Canadian pilot in for testimony following today's session, and that all Members join me in expressing our support for a fair review of Lt. Daly's promotion.

DOE analsyts/CTBT

At a time when Congress was still questioning the validity of the Comprehensive Test Ban Treaty, I obtained a copy of a DOE "gag order" on one of the labs preventing circulation of documents without approval, and requiring notification prior to any congressional interactions. I took Secertary Federico Pena to task for this action, and called on him to protect the sharing of CTBT information with Congress.

Mr. Chairman, I could continue on with these horror stories, and I know that each of the witnesses can speak for many others. But I want to point out that I have been equally supportive of many agency people doing great jobs in a manner satisfactory to the Administration -- and I have not hesitated to applaud those individuals. I have on several occasions written to agency heads to applaud the work of professionals who help us do our job.

But today we must hear those whose voices have been shut out of the policy-making process. I know that none of our witnesses set out to embarrass the Administration -- they would have much preferred to quietly do their jobs with the professional support and courtesy they deserve. I also wish that this Administration had the courage of its convictions to justify its

policies without resorting to the destruction of all conflicting information and those who deliver it. As long as our government snuffs out selective data, we will always question the soundness of its policies. That is no way for a democracy to survive.

The spinmeisters are going to try and convince the public that this is partisan political theater, because they want to deflect from the message we are hearing. Every one of us has a responsibility to hear what these professionals have to say, and more important, to support them when they are being unjustly attacked. This is not the first time Congress has heard the testimony of whistleblowers, nor will it be the last. As Chairman of the Commerce Committee, for example, Congressman Dingell frequently pursued similar cases and provided whistleblowers a forum to make Congress aware of troubling agency developments. I commend those efforts. Likewise, I think we should lend strong, bipartisan support to such hearings in this Congress -- because the message we are hearing is not partisan, it's just the facts.

I urge Members to listen to these stories, and to come together on a bipartisan basis to establish additional protections for those who suffer due to policy disagreements. I am now considering some options to protect those dealing with classified matters and seek the support and advice of each Committee member. Thank you.

Mr. BURTON. Thank you very much, Mr. Weldon, for a very thorough analysis of many problems. You may rest assured that our legal staff will contact those people and have them come in, and we will undoubtedly have more hearings on this.

Mr. WELDON. I forgot one other point.

Mr. BURTON. I would ask you to request to put the memo or e-mail from Mr. Trulock into the record.

Mr. WELDON. I ask unanimous consent to put it in the record.

Mr. BURTON. Without objection.

[The information referred to follows:]

curtpa07

From: Notra Trulock[SMTP:ntrulock@earthlink.net]
Sent: Thursday, June 10, 1999 3:38 PM
To: curtpa07
Subject: Ed McCallum

Card for Notra Trulock

Thank you for bringing attention to this miscarriage. I have worked with Ed for several years and have always found him to be professional in every way. The allegations against him by the Department are inexplicable. I have little doubt that the Department's action are part of the broader pattern of harassment and retaliation against any and all whistle-blowers concerned about national security issues.

Sincerely
Notra Trulock III

Mr. WELDON. When you bring up Mr. Maloof and Dr. Leitner, let me mention this point to you. The bipartisan Cox committee recognized that we had serious problems within DTSA, and wanted to talk to the employees in that agency. We asked as a bipartisan committee that we thought maybe these two were just exceptions and maybe the other employees would discount what they were saying, which is the point Mr. Waxman raised. Maybe they are examples. So I recommended to the full committee, these are all in private sessions, that we ask the Department to allow us to bring in DTSA employees. They said no. I then came back and said can we do a random selection? Just randomly pick employees and bring them in for the committee in a classified way to talk to them. They said no.

On page 213 of the Cox committee report, which all of you got, I would like to make sure this is in the record, there is a separate paragraph, and I would like to read just the title of it to you. It is entitled, "Inability to Survey Defense Technology Security Administration Employees Regarding Agency Management Issues."

We were denied the opportunity to talk to any other DTSA employees besides these two.

Mr. BURTON. Well, we will ask unanimous consent that that part of the Cox report be included in the record, because it is relevant. Without objection, so ordered.

[The information referred to follows:]

105TH CONGRESS 2d Session } HOUSE OF REPRESENTATIVES { REPORT 105-851

REPORT

OF THE

SELECT COMMITTEE ON U.S. NATIONAL SECURITY AND MILITARY/COMMERCIAL CONCERNS WITH THE PEOPLE'S REPUBLIC OF CHINA

SUBMITTED BY
MR. COX OF CALIFORNIA, CHAIRMAN

January 3, 1999 — Committed to the Committee of the Whole House on the State of the Union and ordered to be printed (subject to declassification review)

May 25, 1999 — Declassified, in part, pursuant to House Resolution 5, as amended, 106th Congress, 1st Session

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assistance of the Deputy Attorney General's office, production of much of this material to the Select Committee was delayed for substantial periods of time.

With all due deference to the importance of criminal investigations, the Select Committee believes that national security interests frequently are at least as great, if not paramount. There appears to be no established means, however, by which the Executive departments and agencies engaged in regulatory, administrative, or intelligence functions that could benefit from an awareness of what is being learned in a criminal investigation can be apprised in any timely or complete manner of such information. This is an issue that the Select Committee also believes should be addressed.

Inability to survey Defense Technology Security Administration employees regarding agency management issues. Two mid-level DTSA employees alleged that DTSA is a problem-plagued organization in which DTSA senior management rules with a heavy hand. As a consequence, morale is poor. According to the two employees, DTSA senior managers frequently overruled valid national security concerns when formulating the Defense Department's position on dual-use license applications. Among other things, they also expressed the view that DTSA's recent transfer from the Office of the Secretary of Defense to the Defense Threat Reduction Agency (DTRA) will further weaken and isolate the organization, whose role has already been diminished in the interagency licensing process. Both were critical of current DTSA management and characterized it as secretive and heavy-handed.

The Select Committee was unable to conduct a thorough evaluation of the validity of these concerns due to time limitations and the lack of cooperation by the Defense Department. The Defense Department refused to allow the Select Committee to interview DTSA personnel on these matters unless a Defense Department observer was present. The Select Committee attempted to reach an accommodation by proposing that it interview only the five or six most senior DTSA personnel and conduct a written survey of DTSA personnel regarding these morale and management issues. The Defense Department refused to permit either the interviews or the survey.

Mr. BURTON. I think you covered this, and I will not belabor it because you covered this very, very thoroughly, but why do you think, as a person who has analyzed this, why do you think these kinds of patterns are emerging in these agencies?

Mr. WELDON. Mr. Chairman, I don't have the long-term answer to that, but let me just say as a student of Russia who probably is Russia's toughest critic but their best friend, who wants Russia to succeed, and supports every program the administration has, they call me to get the votes for this and I deliver on this every year, to support all their initiatives, I want the same objective that Bill Clinton and Strobe Talbott wants with Russia and China, but I think there is a fundamental problem here. I think the fear has been we don't want to do anything that might be perceived to be an embarrassment of President Yeltsin or President Jiang Zemin.

Let me give you another example. I was going to mention this in my testimony, but didn't. During the last several years, and it started under the Bush administration, we didn't want to embarrass Yeltsin with the reforms. So when we caught Russia violating arms control agreements, which all of us have voted on and supported, we didn't call into question those violations.

I did a floor speech last July where I documented 37 violations of arms control agreements by China and Russia. This wasn't prepared by me, it was prepared by the Congressional Research Service. These were cases where Russia and China were sending off chemical, biological, nuclear, machine tooling, and other technologies to Iran, Iraq, Libya, Syria, North Korea, India, and Pakistan. Out of the 37 times, we only imposed the required sanctions twice. We waived the sanctions each time.

I was in Moscow in January the year President Yeltsin was going to be reelected and was meeting with Ambassador Pickering. The Washington Post had just reported a front page story about the illegal transfer of Russian guidance systems to Iraq. So I asked the Ambassador, what was the response when you asked the Russians about the transfer of accelerometers and gyroscopes? He said Congressman, I can't ask that question. That has got to come from Washington.

I came back and wrote to the President at the end of January. He wrote me a three-page letter in March. He said, Dear Congressman Weldon, these allegations that the Post has raised are serious. If they are true, they would be a violation of the MTCR and we will take aggressive action. But we have to have proof. We have to know it took place.

Now, the Israelis knew it took place, and we knew it took place. I didn't know at the time. Our intelligence community had 120 sets of these devices. Here are two of them. One is an accelerometer and one is a gyroscope. You want to examine them? They have Russian markings on them. They were clipped off of Russian SSN–19 missiles. They are long-range missiles that were used in their submarines aimed at American cities. We caught Russia three times sending these to Iraq. We never imposed the required sanctions.

We were given the assurances, and I can tell you that Gary Ackerman and Tom Lantos and a bunch of Democrats were very aggressively involved in this transfer. We were assured that there will be an internal investigation done in Russia that will result in

criminal prosecutions. That never happened. So Russia transferred three times these devices that we know of to Saddam Hussein to improve the accuracy of their missiles.

Mr. Chairman, I just think that we didn't want to raise that issue that year because Yeltsin was running for reelection. We were so concerned over the past 8 years of not embarrassing Boris Yeltsin that we didn't call into question when Russia was in violation. We didn't want issues to surface that would maybe embarrass Russia.

Mr. Chairman, I am a friend of Russia, and I will go to the wall with Russia for anybody, but you can't ignore reality and you can't punish innocent Federal employees for doing their job because what they are saying we don't want to hear.

That is not the way you base your security policy. Yes, Russia has problems. It doesn't mean we want Russia to be the evil empire. China has problems. I am going to vote for MFN for the President. I am going to be opposed by many of my colleagues on our side. I want to engage China. But our Government has got to set the tone. We have to understand it is not wrong to be strong and consistent and transparent with these two countries. I think you get weaker when you ignore that.

So my bottom line feeling is that we have just been so preoccupied with not wanting to embarrass each country, that we don't allow issues to rise that we think may cause problems.

Mr. BURTON. Let me just ask you a real quick question about these two devices that you have there on the table, because those are objects that can maybe make the point.

These were given by Russia, sold by Russia, to Iraq?

Mr. WELDON. Given or sold, we don't know.

Mr. BURTON. Given or sold. But on three separate occasions you said?

Mr. WELDON. Twice we found them in the Tigres River Basin. Once with the help of our allies in that area that I can't name, they were given to us.

Mr. BURTON. The point is, these were more accurately targeted missiles——

Mr. WELDON. Against Israel.

Mr. BURTON. And could they be used beyond Israel?

Mr. WELDON. Absolutely. These are long-range guidance systems. Iraq does not have the capability to build these systems. Neither does Iran. They have to get this technology from either the United States, Russia, or now China, even though China got some of its technology from us. So here you have Russia giving this kind of sophisticated technology out, and we catch them, and we don't want to ask them about it. We want to pretend it didn't happen. You can't do that. I am not an enemy of Russia. I am a friend of theirs.

Mr. BURTON. I think you made the point, and I appreciate that.

Mr. Waxman.

Mr. WAXMAN. Thank you, Mr. Chairman. Mr. Weldon, what you had to say was very interesting. I think it is unprecedented, however, that you were given 20 minutes to make an opening statement. I have never seen that happen before, and I hope the chairman will allow all the witnesses to speak as long as they feel they want to, because otherwise what we will be doing is showing favor-

itism to a Member of Congress and telling witnesses they have to be restricted in what they want to say.

Mr. WELDON. I apologize. As a teacher I tend to talk too long.

Mr. WAXMAN. But on the other hand, it is impossible, as a former chairman, to have a hearing where everybody gets to talk as long as they want to talk. Usually there are time constraints.

You have raised a lot of issues. I have no knowledge about these cases, and you feel very passionately about them. I hope the chairman will look into them, because if there are situations where people are being retaliated against because they have information that ought to be made public or ought to be given to the Congress, then I think that it is of great concern to us. But I just want to raise some skepticism about an issue, just to point out there may be two sides to the question.

You said you are going to vote for MFN. Many of your colleagues, even on the Republican side, may not. Suppose I sat down with my staff and I said, well, let's talk about this issue. Should I vote to continue trade relations with China, as we have had it in the past, or should I vote to withhold that kind of privilege as a way to protest China's human rights, China's activities in proliferation of weapons, and China's spying on the United States? How else can I as a Member of Congress express myself?

I go back and forth with my staff, and one of my staffers decides when I reach the conclusion that he ought to go public, she ought to go public, and say I am doing it for the wrong motives? That perhaps I am voting for MFN for China because I don't care about human rights, or I am voting against MFN for China because I don't care about the economic interests of businesses in the United States?

Do you think your staff should be allowed to do that?

Mr. WELDON. My staff I hire, and I want them to have their own opinions. I don't hire the people in our intelligence community and they don't change from administration to administration. I would assume their loyalty to their job and their professionalism is giving us their best judgments.

Mr. WAXMAN. I don't disagree with you. The point also has to be, how do you run an agency? How do you make any kind of decisions in an agency on policy matters if everyone is free to go out and express their opinion and accuse those who reach a different opinion of being disloyal?

Mr. WELDON. You make an excellent point. They shouldn't do that and shouldn't go public, but they shouldn't be harassed, have their job ended, be demoted, have their documentation shredded. I agree with the gentleman.

Mr. WAXMAN. We are obviously arguing on a theoretical level. I don't know fully about the individual cases we may hear from today. But in my mind, there have to be some situations where people, whether they are career or political appointees, when the policy is articulated, can't go out on their own, to criticize it and then try to have it portrayed as someone being disloyal. I assume all the points you raised are not just unique to the Clinton administration.

Mr. WELDON. I think I made that point fairly clear in my statement.

Mr. WAXMAN. People have been criticized by their superiors, in fact discharged by their superiors, both in the Bush administration as well as the Clinton administration and the Reagan administration and at other times as well, for the same reasons you have outlined.

Mr. WELDON. In fact, I praised Chairman Dingell for his work.

Mr. WAXMAN. Well, as I said in my opening statement, which was all too brief in comparison to you and the chairman, I had to say what I had to say and I said it, and that is we need to be protective of whistleblowers, because whistleblowers do give us information that ought to get out, and in many cases they are very courageous, and I fully support that concern. On the other hand, I just want, as you do, a way to be sure that we are dealing with truth and not criticizing people because they have taken different policy positions or are acting improperly as people disagree.

Mr. WELDON. I agree.

Mr. WAXMAN. Thank you, Mr. Chairman. I am not using my full 5 minutes.

Mr. BURTON. Thank you, Mr. Waxman. Mr. Shays.

Mr. SHAYS. I just want to publicly say, Curt, I thought your presentation was really outstanding. What I take particular satisfaction in, is you have been someone who has labored in the vineyard year in and year out, not just issued press releases, done really substantive work, and we are seeing the fruit of your labor. It is extraordinary in so many areas. You are, for instance, a strong supporter of an alliance, good working relationship with the former Soviet Union. You have more contacts in the Soviet States than most people in the administration. So as one Congressman to another, I just want to say to you, I am really in awe of how long you have labored in this area, how you have kept it to yourself for so long, not issued press releases, not made an issue of this, just done your homework like no one else has.

As a result, you know a heck of a lot more than almost anyone that I know on these issues. So your testimony was very valued.

Mr. WELDON. Thank you, Mr. Shays. If you will yield to me or if you will give me time to respond and just say that Steny Hoyer, who is my co-chair on the Russian initiative, has been laboring long before I was in Russian relations. It is a bipartisan effort.

We supported the administration. I was proud to go over to Moscow to help the administration convince the Russians that our policy in Iraq was the right one, and the administration knew what I was doing because I felt it was the right thing.

What we are doing is right for the country and it is not meant to try to create any undue embarrassment for anybody, but I appreciate your good comments, Mr. Shays.

Mr. BURTON. Does the gentleman yield back his time?

Mr. SHAYS. Yes, sir.

Mr. BURTON. The gentleman yields back his time.

Mr. Wise.

Mr. WISE. Thank you, Mr. Chairman.

Mr. Weldon, I was interested in your presentation because I often tell groups at home that the Congress is like a giant university, in the sense that you can't come here and specialize in everything but you have got to specialize in a few things, and then you

develop expertise and people come to respect you. And you certainly have done that in the national security area, and I think that is very important.

It is just like I learned a long time ago, since most of us have to stand uphill in West Virginia, I learned not to spend a lot of time on agriculture and I leaned to others, and by the same token on national security I look to you and to others on both sides of the aisle; whereas, I hope to focus on transportation and matters that are important. But I want to thank you very much for your presentation.

There was one point that you made that I think points out some complexities, and I wanted to take it up with you for just a second, if I could. You spoke about, a number of times, where it was observed that Russia is probably involved in selling to Iraq, and the United States didn't take action, didn't impose sanctions.

I, like you, have been a supporter of MFN. I am wondering about it at this time, because I keep saying each year that I am waiting to see further progress be made. So I am wondering about MFN for China.

But it is also the case that I think there are a number of incidents where China clearly, and even some of the investigations that the chairman and this committee have done, where China makes you wonder about whether we ought to say no to get their attention, but we haven't. And you voted the way you have and I have voted with you, incidentally, in that area, because we felt that the complexity was such that while this was bad and we had to call attention, whether it was human rights or missile proliferation or whatever it was, that we needed to stay engaged. So that could also be the administration's rationale on the Russian situation as well.

Mr. WELDON. No, I understand. As I said, Mr. Wise, I have supported the administration's engagement with Russia. In fact, I have encouraged them to do more. I am trying to get them to help establish a Russian mortgage housing financing system for the Russian people. I have been working on that for 2½ years.

I think we have to—I think many of our problems in dealing with Russia and China are of our own creation. We think we can't talk to them—when things occur that they shouldn't be doing, we should be confronting them with that; not walking away and pretending it didn't happen. I think they lose respect for us.

You know, Russians understand when you are honest and open and tell them what they are doing wrong. They respect you for that. But when you don't tell them and when you pretend it didn't happen, I think they lose respect. So I support the administration's engagement policy. I think it is the right policy. I think in many cases our own government has failed itself, and I say the Congress with it. I am not just trying to blame the administration. There are some times where Members of Congress in both parties have pressured the administration in the case of China to lower the export controls, you know, but I mean there is a problem here that we have to understand. As Mr. Waxman said and you said, it is very complex, it is not easy, but I am convinced that we need to continue to engage both countries.

They are not going to go away and it is not going to get better if we ignore them. I think it will get worse. But we should engage them on our terms and we should engage them around people like the two professionals sitting behind me, or the five, to basically tell us what we can transfer and what we can't, and when they try to get stuff that they shouldn't get, then we hold them accountable, and when they sell this kind of stuff, we slap their hand.

Mr. WAXMAN. Will the gentleman yield to me?

Mr. WISE. Sure.

Mr. WAXMAN. Let's look at Russia as an example. The United States could have determined, and probably should have determined, we were better off with Yeltsin winning that election than Zyuganov winning the election.

Mr. WELDON. Absolutely.

Mr. WAXMAN. And having restoration of the Communist party.

Mr. WELDON. Absolutely.

Mr. WAXMAN. So if the administration sees that there is information, if it is presented in a certain way, could have consequences in Russia——

Mr. WELDON. Absolutely.

Mr. WAXMAN [continuing]. Aren't they responsible, as the ones running our foreign policy, to make sure that we don't do harm in Russia? Let's say someone within the Department, a career person, wanted to hold Russia accountable, which is proper, but hold them accountable in a time and in a manner that could have adverse consequences. He may not/she may not be thinking of the bigger foreign policy picture and the U.S. policy, which is not set by career people in the Department, but by the Secretary of State acting under the President of the United States?

Mr. WELDON. No, I agree with the gentleman. I would say that is the prerogative of the President and the administration and the State Department, but this was 4 years ago. The election took place 4 years ago. We never followed through, and the Israelis know this. We never followed through to hold this agency, these entities, accountable for what they did.

Mr. WISE. Can I get my time back so I can just close up? Thank you.

Mr. Weldon, I just want to thank you again and just say that I agree in the case of both Russia and China, they need to be held accountable. I think what we have both been saying is, maybe in roundabout ways, there are often other factors that determine how you hold them accountable and when.

Mr. WELDON. Yes.

Mr. WISE. I appreciate that. Thank you.

Mr. BURTON. The gentleman's time has expired.

Mr. Horn.

Mr. HORN. Thank you very much, Mr. Chairman.

I want to say you have done a brilliant job, as you usually do, Curt. I have learned in the last 7 years in the House of Representatives where the experts are, and you are truly on the list of the top three or four, we all know that, and you do operate on a bipartisan basis, and those are the people around here that get respect and get things done, and I think you have proved this morning you have both.

I think, Mr. Chairman, it is outrageous when professional career servants who are doing their duty, as they see the right to do that duty, are squashed by any administration, and I would hope this committee would treat a Republican administration like they would treat a Democratic administration.

If the Congress cannot get the information it needs in executive session or whichever way, then we have got a major problem in this country. We cannot base our decisions on simply propaganda from either a Republican or a Democrat administration.

I realize that often there are people more loyal than the king, shall we say, and that is true. We have seen that over the years, but we need that information to make judgments. And if we let that fail and people do get harassed, driven out and even sent off to what I think the FBI used to do, Boise, ID or Montana or someplace, that is just plain wrong and we have got to make sure that doesn't happen.

Thank you very much for coming.

Mr. BURTON. Mrs. Mink.

Mrs. MINK. Thank you, Mr. Chairman.

I too want to join my colleagues in commending you, Mr. Weldon, for your expertise and knowledge that you have brought to this committee. I think you have raised some very interesting questions that this Committee on Government Reform must look into.

Saying that, I think I have to concur with the ranking member, Mr. Waxman, in saying that there is a big difference between a disagreement on policy and the way in which an executive agency deals with those disagreements in terms of harassment and intimidation and demotions and all sorts of matters that—or manners in which they can deal with these individuals. And I think that that is really within the prerogative of this committee to investigate and correct, if necessary, if these behaviors are a part of the systematic procedure to try to coerce their experts and their specialists into a political—a politically correct kind of recommendation or a management decision. Then we would be denying the opportunity to gain and benefit from expertise if we are conditioning their expertise to following a particular line that may be the policy line of a current administration.

So I think that the issues that you bring before us are very important, and I would hope that the committee would pursue those from that vantage point than an inquiry as to whether the policy was correct or incorrect.

Mr. WELDON. No, I understand. And I agree.

Mrs. MINK. Thank you very much, Mr. Chairman.

Mr. BURTON. Thank you, Mrs. Mink.

Is there further questioning of the witness?

If not, thank you very much, Mr. Weldon, for your testimony.

Mr. WELDON. Sorry I took so long.

Mr. BURTON. It has been very, very helpful. We really appreciate it.

Mr. WELDON. I owe you one, Henry.

Mr. BURTON. We have a vote on the floor. Since we have a vote on, rather than start with the next panel I think we will go vote and come right back and we will start with the next panel as soon

as we return. So please excuse us. We stand in recess until the fall of the gavel.

[Recess.]

Mr. BURTON. The committee will reconvene. We have members that will be drifting back in because the vote has just concluded on the floor on the final passage of the flag burning amendment.

So I would like to have the five witnesses, Mr. Bransford, Lieutenant Colonel McCallum, Dr. Leitner, Mr. Maloof, and Mr. Fox come forward.

Is Mr. Fox here?

Mr. MALOOF. Yes.

Mr. BURTON. I guess we don't have it in order here. Where is Mr. Maloof? Where is Mr. Fox?

Mr. MALOOF. I think he stepped out for a minute, Mr. Chairman.

Mr. BURTON. We probably ought to wait for Mr. Fox because I need to have you sworn in.

Everybody run and check the men's room, or wherever he might be.

Would you all please stand and raise your right hands, please.

[Witnesses sworn.]

Mr. BURTON. Be seated.

Lieutenant Colonel McCallum, we will start with you. I understand that we are going to allow each one of you 10 minutes because your story is going to take a little bit more time than normal. So you have 10 minutes to testify.

Mr. BRANSFORD. Mr. Chairman.

Mr. BURTON. Yes.

Mr. BRANSFORD. My name is William Bransford. I am Colonel McCallum's attorney and I would request permission to make just a very brief statement before Colonel McCallum talks.

Mr. BURTON. Proceed.

STATEMENTS OF LT. COL. EDWARD McCALLUM, DIRECTOR OF THE OFFICE OF SAFEGUARDS AND SECURITY, U.S. DEPARTMENT OF ENERGY, ACCOMPANIED BY WILLIAM L. BRANSFORD, ESQ., SHAW, BRANSFORD, VEILLEUX & ROTH, WASHINGTON, DC; PETER LEITNER, SENIOR STRATEGIC TRADE ADVISER, DEFENSE THREAT REDUCTION AGENCY; MICHAEL MALOOF, CHIEF OF TECHNOLOGY SECURITY OPERATIONS, DEFENSE THREAT REDUCTION AGENCY; AND JONATHAN FOX, ESQ. ARMS CONTROL SPECIALIST, DEFENSE SPECIAL WEAPONS AGENCY

Mr. BRANSFORD. Thank you, Mr. Chairman.

Yesterday afternoon, I received a surprising fax from Mary Anne Sullivan, General Counsel to the Department of Energy, a copy of which I provided to committee staff. I received this fax in the afternoon, even though I had previously notified the General Counsel that Colonel McCallum's written testimony was due to the committee before 10 o'clock yesterday morning.

General counsel's letter limits Colonel McCallum's ability to respond to the Department of Energy's charges against him. We interpret the letter as allowing Colonel McCallum to make a general denial about his disclosure of classified information, but not to reinforce his position by any specific information, even if he can do so

with reference to unclassified guides and procedures. We hope the committee understands Colonel McCallum's situation.

He has been placed in an untenable position. He is being told he cannot defend himself; he cannot tell this committee why the Department of Energy is wrong, even though the Department of Energy did not itself follow its own procedures.

Under current law, the Department has unbridled power to make classification decisions without review and then use that authority to retaliate against executives like Colonel McCallum who tell them about specific threats to the health or safety of the American public.

For these reasons, we have drafted a legislative change to 5 U.S.C. section 7532 that would allow for interagency review of classification issues like those affecting Colonel McCallum. We offer it for the committee's consideration.

We hope the committee understands that Colonel McCallum may have to limit his answers because of the threats in the General Counsel's letter, and I would request that the letter from the General Counsel to me yesterday and the draft legislation that we have prepared be admitted in the record.

Mr. BURTON. Without objection, so ordered.

But let me make sure I understand this. There have been threats issued in this letter, and I have not yet read it, that will limit the testimony that is not classified pertaining to what Lieutenant Colonel McCallum is going to tell us?

Mr. BRANSFORD. The letter to me, Mr. Chairman, states that Colonel McCallum is not at liberty to describe in his testimony his views of the correct classification of the information in dispute, even if he can do so by reference to unclassified information. So he is very much limited in what he can say and we are very much concerned that if he doesn't limit his testimony, the Department could take action against him based upon his actions in that regard.

Mr. BURTON. Can he give this information to us in a closed hearing?

Mr. BRANSFORD. Mr. Chairman, I don't know. It is hard to say whether he could or couldn't.

I would think that he could. It is my interpretation of the letter that he can make a general denial, and I think that is sufficient. I think the written testimony we provided the committee yesterday——

Mr. BURTON. All right. We will let him go as far as he can, but I just want to say that the Department of Energy and Mr. Richardson, the head of the Department of Energy, has done everything possible in his power to try to stop this hearing today. I have never seen any kind of pressure exerted like this. I mean, they have gone to the leadership of the House and everything else to try to stop this hearing, and now we are getting a letter from the Department of Energy trying to harness what Lieutenant Colonel McCallum says. I think it is despicable and I just want the Department of Energy to know this isn't the end of it. Whoever is here from the Department of Energy, this isn't the end of it. We are going to pursue this. This is baloney.

The Congress of the United States has a right to know these things, and so do the people of the United States, if our national

security has been imperiled because of actions that they have taken or nonactions that they have taken.

Lieutenant Colonel McCallum, you are recognized for 10 minutes.

Colonel MCCALLUM. Mr. Chairman, Congressmen, Congresswomen, thank you for the opportunity today to speak with the committee about lapses in the Department of Energy's Nuclear Safeguards and Security Program and the Department's long history of suppression and reprisal against individuals attempting to do their jobs.

Mr. BURTON. Would you pull the mic a little bit closer? We want to make sure we hear everything you say.

Colonel MCCALLUM. DOE's arrogant disregard for national security is clearly described in the recent report on security at the Department of Energy by the President's Foreign Intelligence Advisory Board and Congressman Cox's committee report on espionage in our national laboratories.

It is clear today that the DOE has sacrificed nuclear security for other budget priorities and has jeopardized national security by failing to protect its laboratories against widespread espionage or against the possibility of terrorist attack.

Over the last 9 years, I have served as the Director of DOE's Office of Safeguards and Security. In this capacity, I have been responsible for developing the policy that governs the protection of the Nation's nuclear assets, including weapons, nuclear materials from which nuclear weapons are made, highly classified information, and personnel security clearances. My office is also charged with investigating security incidents involving the possible loss of nuclear materials and the unauthorized disclosure of classified information.

You will note that these authorities did not include implementation at our sites or an oversight responsibility, which are a significant organizational flaw which I describe in my more extensive written testimony and in some of the reports that have been written for the Department.

As you may know, or as you know now, the Department of Energy placed me on administrative leave on April 19th. Some DOE officials allege that I committed a security infraction. They claim that I disclosed classified information during a discussion with a whistleblower from a DOE site.

This is not true. Based on the Department's published classification procedures and guides, these allegations are completely unfounded. I have released no classified information. I have been an authorized classifier in the Department of Energy for over 25 years, and helped develop the first classification guide in the safeguards and security area in the mid-1970's. I am also the Department's subject matter expert on the areas of tactics, use of forces and protection of our facilities.

Yet, it is strange that the Department did not consult my staff, nor me, before taking this action. They failed to follow their own procedures in investigating this incident and, indeed, in following up with an appeal before I was placed on administrative leave. In fact, the office that is designated by regulation in the Department

to adjudicate these issues, the Office of Declassification, was directed not to do their duties and provide the review.

This is incomprehensible. Instead, the Assistant Secretary for Defense Programs, an organization which my office has been extremely critical of in recent years because of incidents that have become public in recent months, was tasked to do the job. The outcome was not a surprise. Their approach was sophomoric, based on speculation and supposition and a clear lack of tactical technical expertise. I believe this action to be a clear and obvious act of retaliation against myself and the office that has tried to bring forward an increasingly distressing message of failed security at the DOE laboratories.

The timing of these charges shows a clear attempt to discredit and intimidate me immediately before I was to testify before the PFIAB, and most certainly before the Congress, relative to the recent espionage issues at the Department labs. I informed DOE that I had been asked to appear before Senator Rudman's panel to discuss DOE security on April 16. I was placed on administrative leave on April 19th; then called the next day and asked to delay my appearance before the panel until after Secretary Richardson could speak to them first.

What is most disturbing, although doubtlessly ironic, is the Department's defense of its action by invoking the mantra of national security. The Department has adopted this position and the position that the content of the so-called security infraction is so secret that neither congressional staffs nor my attorneys can review the information in question. It is a variation on the old adage, "I could tell you all about it but then I would have to kill you."

The fact that I must discuss this allegation in such a public forum is personally and professionally distressing. However, I feel compelled to do so because this action is one in a long history of suppression and reprisal against others and myself and, as such, I feel constitutes a serious and continuing abuse of power. I speak out in the trust that this committee and other Members of Congress will take the legislative steps necessary to protect individuals who continue to fulfill their responsibilities.

Many career civil servants and contractors carry on their mission despite the likelihood that should they become the bearers of bad tidings they face harassment, open threats, and the loss of their careers and certainly their reputations. These men and women are sometimes all that stand between callous risk to the Nation's welfare and individuals who choose to say whatever will deliver the most favorable spin at the moment.

I am here to tell you that these civil servants and Government contractors are watching what is happening to me and the other men at this table today. They are watching because they already know what has happened to others. Men such as John Hnatio, Jeff Hodges, Dave Leary, Jeff Peters, and Mark Graff have all had their careers ruined for coming forward and addressing serious lapses of security at DOE facilities. Can we continue to allow such intimidation, neglect and indifference regarding these serious matters? I tell you, the message that our employees have received thus far is, do your duty but do so at the risk of being smeared, fired, or both.

This year, one of our best and longest-serving field Security Directors suddenly retired after attempting to take action against a contractor employee who willfully violated security procedures and admitted a Russian visitor with an untested computer to a security area at one of our facilities.

In January 1997, David Reidenour, head of security for one of our sites, retired in disgust after only 90 days on the job. Mr. Reidenour said, "In my professional life as a military officer, as a registered professional engineer and as a technologist, I have never before experienced a major conflict between loyalty to my supervision and duty to my country and the public. I feel that conflict today." Men like Rich Levernier, Gary Morgan, Don McIntyre, and Jay Stewart are joined by contractor Security Directors like Bernie Muerrens and Link White who tried to do the right thing for their country but were rewarded by replacement or reprisal.

Today, men and women of conscience within the Department of Energy are falling silent because they do not see support from the top at a national level, and some simply cannot afford to go without the income they need to support their families. Mr. Chairman, these people shouldn't have to choose between doing the right thing and supporting their families.

As the Director of the Office of Safeguards and Security, my team has provided senior DOE management with sound judgment regarding security at our Nation's most critical strategic nuclear facilities. We have provided specific action plans to correct shortcomings, sometimes even though much of what we have recommended has not been welcomed nor considered politically correct now that the cold war is over.

However, the steady decline in resources available to the DOE Safeguards and Security Programs, as well as a lack of priority, or indeed in many cases no priority, have allowed the Department's security posture to deteriorate to a point where its effectiveness is highly questionable.

I have included in my written testimony some references to unclassified reports from the Office of Safeguards and Security issued between 1994 and 1999, which document the reduction in the Department's nuclear security readiness. These reports are supported by hundreds of classified reports which provide detailed analysis of our sites. The information presented in the testimony I submit today is not new. The message of lax security has been repeated consistently over the last decade in reports prepared by my office, such as the Annual Reports to the Secretary in 1995, 1996, and 1997. In fact, these reports were frequently referenced and footnoted in the PFIAB report. They cite a litany of failed efforts, such as a computer security regulation that was rejected in 1995 by the laboratories and their DOE program Assistant Secretaries as too expensive. This change, which would have only required simple firewalls, passwords, and prudent business practices, may have prevented many of the losses of classified information which we have reported recently and, in fact, would have been less costly than the several days of shutdowns at our national laboratories, which we have already seen executed this year, to try to react to those losses.

The 1997 Annual Report to the Secretary points out that most of our facilities by that time were no longer capable of recapturing a nuclear weapon or a nuclear facility if it were lost to an adversary, and describes the DOE security force as a hollow force because of excessive reductions in personnel and in training to our security police officers. Storage facilities are seen as aging and inadequate, and security alarm systems increasingly obsolete. These serious deficiencies are described and contrasted against the backdrop of increased openness to our sites, increased openness to our data, increased foreign visitation to both the sites and the security areas within the sites; increased declassification of information, while at the same time facing a 30 percent increase in the amount of special nuclear material which we were required to store, and a 40 percent decrease in our budget.

External reviews such as the earlier report to the Secretary by General James Freeze, or the Nuclear Command and Control Staff Oversight cite similar concerns. There have also been numerous GAO reports. However, the Department has not chosen to resolve these serious and longstanding problems.

Secretary Richardson recently announced the selection of a new security czar. Based on the Secretary's announcement, many of these ongoing concerns could be answered. However, the Secretary's statements and the actual events occurring within the Department are strikingly different. A disturbing document entitled, "Safeguards and Security Roles and Responsibilities" has been circulated by the Under Secretary and some laboratory proponents that would give the security czar less authority than I had in the Department for the last 10 years. Specifically, in the proposed structure, critical approvals would be delegated from the headquarters to the very laboratories that have allowed critical losses. Important security plans, as well as exceptions to national and departmental regulations, would be delegated to the field. And finally, oversight inspections would be conducted only "for cause."

Based on initial reviews, ladies and gentlemen, this devolution of the few authorities reserved to the Department is in direct conflict with the serious negligence identified in both Congressman Cox's report and that of the PFIAB. It is the organizational equivalent of sending the fox in to count the hens. The head of such an eviscerated organization could hardly be called a czar. This proposal developed by the labs at a cost of almost $2 million is a perfect example of the organizational and policy interference by the labs that is well documented, I believe, also in the PFIAB report. It begs the question, who is in charge?

May I have 30 seconds to close, sir?

Mr. BURTON. Yes.

Colonel MCCALLUM. Mr. Chairman, although the DOE security policy is carefully coordinated with the interagency through the U.S. Security Policy Board and is consistent with the DOE and other high security agencies, it has never been fully or successfully implemented in the DOE.

The arrogant disregard for regulations and contract requirements and the long history of denial by the laboratories and DOE program Assistant Secretaries, have resulted in an ineffective program of protection and the loss of our Nation's most critical secrets.

External oversight and separate line item funding—and I would like to underscore that—external oversight, such as proposed by the Senate, and separate line item funding for security are essential if the reform which the Department is talking about is to be effective.

Meanwhile, the Department's history of harassment and reprisal has sent a clear warning that the government does not want to keep or attract its best and brightest. Despite current legislation, gaps exist in protections where classified information may be part of the issue. Willful negligence has flourished in the Department and will continue to do so as long as officials can hide behind capricious and sometimes malicious acts under the mantra of national security.

While I place no higher value than duty to my country, some forum must be identified or chartered to assure that everyone has a fair and impartial hearing when they bring out wrongdoing. All of us must have the same right to due process which we expect as citizens and as provided for by our Constitution.

Mr. Chairman, career civil servants are charged foremost with ensuring the public health and safety and the protection of our environment. However, if civil service is based solely on a personal or political whim, then the public will be protected and served only as long as it is politically expedient to do so.

It is time to accept the responsibility that we have for nuclear and national security, correct past failures and rebuild our programs. Thank you, sir.

Mr. BURTON. Thank you, Lieutenant Colonel McCallum.

[The prepared statement of Colonel McCallum follows:]

TESTIMONY OF

EDWARD J. MCCALLUM

BEFORE THE

HOUSE COMMITTEE ON GOVERNMENT REFORM

SECURITY LAPSES AT

DEPARTMENT OF ENERGY FACILITIES

THURSDAY, JUNE 24, 1999

TESTIMONY OF EDWARD J. MCCALLUM

Mr. Chairman, thank you for the opportunity to speak with the committee today about the Department of Energy's (DOE) Safeguards and Security Program, and the Department's long history of suppression and reprisal against individuals attempting to do their jobs. DOE's arrogant disregard for national security is clearly described in the June 1999, Report on Security at the Department of Energy by the President's Foreign Intelligence Advisory Board (PFIAB), and Congressman Cox's committee report on espionage at our national laboratories. It is clear today that DOE has sacrificed nuclear security for other budget priorities and has jeopardized national security by failing to protect its Laboratories against widespread espionage or against terrorist attack.

Over the past nine years, I have served as the Director of DOE's Office of Safeguards and Security. In this capacity, I have been responsible for the policy that governs the protection of the DOE's national security assets, including nuclear weapons, nuclear materials, highly classified information and personnel clearances for these assets. My office is also charged with investigating security incidents involving the loss of nuclear materials and the unauthorized disclosure of classified information.

As you know the Department of Energy placed me on Administrative Leave on April 19, 1999. DOE officials allege that I committed a security infraction. They claim that I disclosed classified information during a conversation with a whistleblower. This is not true based on the Department's own classification procedures and guidelines (CG-SS-3, Chap 10, Dispersal of Radioactive Material), these allegations are completely unfounded. I have been an authorized

classifier in the DOE and its predecessor organizations for over 25 years and helped develop the first classification guide in this area in 1976. I am also the Department's subject matter expert in this area, yet the DOE did not consult my staff or me before taking this action. Further, DOE failed to follow its own procedures in investigating these issues before placing me on Administrative Leave, and has failed to respond to my classification challenge since. I believe this action to be an obvious act of retaliation against the individual and the office that has tried to bring an increasingly distressing message of failed security at the DOE Laboratories forward since 1995. In addition, my situation at DOE remains unresolved with the threat of a more serious actions as a realistic possibility.

Prior to joining the Office of Safeguards and Security I held several high level positions within the Department's safeguards and security program areas. From 1988-1989 I served as Director, Office of Security Evaluations. In 1978 I joined the DOE at the Chicago Operations Office and in 1979 became the Director of the Safeguards and Security Division. Prior to joining DOE, I served as an officer in the U.S. Army. Active military service included a number of Military Intelligence and Special Forces assignments in Europe and Southeast Asia. I culminated my military duty as a reserve officer after over thirty years of active and reserve service.

As the Director, Office of Safeguards and Security, my team has provided senior DOE management with sound, professional judgement regarding security of our nation's most critical strategic nuclear assets. We have provided specific action plans to correct shortcomings, even though much of what we have recommended has not been considered politically correct, since the Cold War is now over. The steady decline in resources available to the DOE safeguards and security program as well as a lack of priority has allowed the Department's security posture to deteriorate to a point where it is not effective. I refer in my written testimony to a number of unclassified reports

from the Office of Safeguards and Security, issued between 1994 and 1999, which document the reduction in the Department's security readiness. These reports are supported by hundreds of classified reports which provide detailed analysis.

The information presented in the testimony I submit today is not new. The message has been repeated consistently over the last decade, in such reports prepared by my office as the Annual Reports to the Secretary in 1995, 1996 and 1997. In fact, these reports were frequently referenced and footnoted in the PFIAB Report. External reviews such as the Report to the Secretary, by General James Freeze, or the Nuclear Command and Control Staff Report on Oversight in the DOE in 1998, cite similar concerns. There have also been a large number of General Accounting Office Reports addressing these and other areas. We have frequently reorganized, restructured and studied these issues, however, the department has not chosen to resolve these serious and longstanding problems.

I would like to cover a few specifics to introduce the committee to the severity of the issues. Technical expertise and continuous external oversight will be required to assure their correction. Reorganization and reshuffling will not suffice.

COMPUTER SECURITY

One of the primary interests expressed in recent months, and indeed widely covered by the media recently, is the loss of classified information from the computer systems at the National Laboratories. Indeed, I believe we are sitting at the center of the worst spy scandal in our Nation's history.

The DOE Computer Security Program suffers from a variety of problems. Of primary concern is the lack of protection for unclassified sensitive information and the ease with which it can be transferred from classified systems. Until last month little guidance had been issued on how to protect sensitive but unclassified information. Further, system administrators are charged with the

responsibility for designing their own protective measures. Unfortunately, many of them do not have the computer security knowledge required to implement a sound computer security program. Attempts to issue comprehensive guidance by my office and the Chief Information Officer as early as 1995 met with significant Laboratory resistance and failed. Several Laboratories and their Program Assistant Secretaries in Washington believed that providing protection, such as firewalls and passwords, was unnecessarily expensive and a hindrance to science. Implementation of the proposed Computer Security Regulations in 1996 would have prevented many of the losses being reported today.

A variety of computer security tools and techniques, such as encryption devices, firewalls, and disconnect features, are required by policy; however, these policies were frequently ignored. Something as simple as using different size floppy discs between classified and unclassified systems was refused as unnecessary.

Last year, despite the most severe and candid briefings to the Secretary on compromises of nuclear weapons data at our National Laboratories, we were still unable to move essential policy changes forward. It was not until Congressman Cox's report began to take shape that DOE began to react.

PROTECTIVE FORCES

While much attention of late has been directed toward foreign visitors, espionage and the protection of classified information, equally serious cause for concern exists in other areas as well. For instance, since 1992, the number of protective forces at DOE sites nationwide has decreased by almost 40% (from 5,640 to the current number of approximately 3,500). In 1996, the numbers were far worse, but continuous pressure from my office resulted in an increase of several hundred Security Police Officers over that low. In the same timeframe the inventory of nuclear material has increased

by more than 30%. The number of Security Police Officers has declined to the point where it is questionable at some facilities whether the DOE Security Force could defeat an adversary. By 1996 several facilities were no longer capable of recapturing a nuclear asset or facility if it were lost to an adversary. Indeed, a number of sites stopped training for this mission because resources were reduced below the minimum level necessary to expect success. We have had some success in increasing security force numbers in recent years and at this time all sites claim they can satisfy the requirement to maintain control over these facilities. Yet, several of these sites are using unrealistic performance tests to verify that their Protective Force can recognize, contain and neutralize the adversary. For instance, artificial "safety constraints" are imposed on exercise adversary teams that effectively neutralize their ability to operate. A review by a DOD Special Operations team at one of our sites last year reported that needlessly restrictive exercise rules for the intruders resulted in a false site win and a false sense of security.

There have been several other consequences of reduction in the number of Security Force Officers. First, DOE sites are relying increasingly on local law enforcement agencies to handle serious security threats. While their dedication and intent are clear, their training and ability to respond in a timely manner in a nuclear terrorist situation is questionable. Second, sites have difficulty increasing the operations tempo of security during high threat periods. Finally, an average annual overtime rate in our nuclear weapons facilities of approximately 25% has had detrimental affects on safety, training, and response capabilities.

EXERCISES

A centrally funded and well-integrated National-level security exercise program is critical to meet the safeguards and protection needs of DOE and the nation. Exercises that address site response and management of security crisis are required by regulation to be held annually at critical DOE facilities. However, participation by State and local law enforcement, regional offices of the Federal Bureau of Investigation (FBI) and other Federal agencies is inconsistent and varies considerably. Under Presidential Decision Directive 39, U.S. Policy on Counterterrorism, and Decision Directive 62, Protection Against Unconventional Threats to the Homeland and Americans Overseas, the Secretary of Energy is directed to conduct exercises to ensure the safety and security of its nuclear facilities from terrorism. With the cooperation and support of the FBI, several regional exercises were conducted at DOE sites in the last year. However, funding and commitment are far short of the required goals. My staff has estimated that we are meeting only about 25% of our site requirements. Importantly, the majority of the funding for exercises resides at the site level where expenditures must vie with other immediate program needs each fiscal year, usually to their detriment.

PHYSICAL SECURITY SYSTEMS

Another area of concern involves aging and deteriorating security systems throughout the DOE complex. Physical security systems such as sensors, alarms, access control and video systems are critical to ensure the adequate protection of Special Nuclear Material (SNM) and classified material and weapons parts. Many facilities have systems ranging in age from 14 to 21 years, and are based on technology developed in the mid-70's. Because of the obsolescence of these systems they fail too frequently and replacement parts and services are increasingly expensive and hard to obtain. Expensive compensatory measures (i.e., security force response) are required as a stopgap

measure to assure adequate protection. Older systems are also vulnerable to defeat by advanced technologies that are now readily available to potential adversaries. Continual reductions, delays or cancellations in line item construction funding increase the risk to sites security. Also, DOE is not realizing significant savings available through advancements in technology that have increased detection, assessment, and delay capabilities.

PERSONNEL SECURITY

I fear that a recent decision by the Department to have HQ Program Offices fund the cost of clearances for field contractor personnel will have severe repercussions. Since implementing this new approach at the beginning of FY 1999, we have already seen a dramatic increase in the backlog of background investigations. As with other security areas, program offices must decide between competing interests when determining those areas to be funded. Unfortunately, security activities are relegated to a lower tier in terms of importance by most program Assistant Secretaries and field sites. This appears to be the case with the funding of security background investigations. As the first line of defense against the "insider" threat, adequate funding and timely conduct of reinvestigations is critical to ensuring that DOE maintains a security posture commensurate with the level of threat and that only reliable and trustworthy individuals are given access to critical national security assets.

COUNTERTERRORISM MEASURES

Presidential Decision Directive-39, The United States Policy on Counterterrorism, requires all governmental agencies to implement security measures to defend against weapons of mass destruction, including chemical and biological weapons. The Office of Safeguards and Security has developed the necessary policies and requirements for implementing PDD-39. Labs and production plants, however, have been slow to purchase and install explosive detection systems, with only a limited number of sites having done so. HQ program Assistant Secretaries claim that there is no

funding for such equipment. I find it hard to believe we can find money to provide explosive detection at airports nationwide but not at our most sensitive nuclear facilities.

A PATH FORWARD

Operating beneath the surface of these major challenges are some fundamental issues that, if properly addressed, could provide the impetus to effect real progress. These challenges are not new, nor are their solutions.

SAFEGUARDS AND SECURITY PROGRAM FUNDING

This is the central and root-cause issue for failed security in the DOE. As previously stated, when HQ program Assistant Secretaries face funding shortfalls, there is a tendency to cut security programs in equal or greater proportion than other program elements. In recent years, these cuts have been routinely made without the benefit of assessing the impact these cuts have on the security of the site or assets in question. The implementation of virtually every security program, from the Information Security Program to the Protective Forces, has suffered significantly. Many of these cuts are shortsighted and ill advised, and as we have seen they have led to serious security lapses. Nevertheless, my office had no authority to ensure HQ program Assistant Secretaries implementation of departmental security policies and requirements. Similarly, my office has few resources to provide program offices or field elements to help pay for appropriate security measures. The new Security Czar does not have a budget for implementation. Safeguards and Security budgets for DOE should be provided through one or more line items to the Security Czar, not the program Assistant Secretary. Without an adequate budget there is simply no authority.

OVERSIGHT

It should be apparent that attempts to implement internal oversight of the DOE safeguards and security program have failed over the last decade. While there have been high points and periods when oversight has been effective, organizational and budget pressures have played too central a theme for this function to remain within DOE. An organization like the Commission on Safeguards, Security and Counterintelligence for Department of Energy Facilities proposed by the Senate in Section 3152 of the National Defense Authorization Act for Fiscal Year 2000 should be established to independently review Security at DOE and the Laboratories. This would fulfill longstanding recommendations of both GAO and the Congress. Further a direct information mechanism should be established to one or more of the Congressional Committees.

ORGANIZATIONAL STRUCTURE

In all of the reviews of the safeguards and security program conducted during the last decade, there is a recurring theme. Namely, the organizational structure of the Department's Safeguards and Security Program does not align programmatic authority and responsibility and is too open to manipulation by the contractors. The Safeguards and Security Program in its current structure has one organization developing policy, training and providing technical field assistance (OSS), another organization providing funding and "implementing guidance" (Headquarters Program Offices), a third tier of organizations (Field Sites) is responsible for implementation of policy, while a fourth (EH) is responsible for oversight. A fundamental change in both the organizational structure and funding of the Safeguards and Security Program is absolutely necessary before the Department can begin to systematically address the major challenges previously addressed. These organizations must be consolidated with policy, guidance and implementation in one location, and with an appropriate budget to participate in Department decision making.

Secretary Richardson recently announced the selection of a new "Security Czar" for the Department. Based on the Secretary's pronouncements many of these concerns could be answered. However, the Secretary's statements and the actual actions occurring within the DOE seem startlingly different. A disturbing document entitled, "Safeguards and Security Roles and Responsibilities" has been circulated by the Undersecretary and Roger Hagengruber of Sandia National Laboratory that would give the Security Czar less authority than I had in DOE. Specifically, in the proposed security structure, critical approvals would be delegated from Headquarters to the very Laboratories that have allowed critical losses. Important security plans as well as exceptions to national and departmental regulations would be delegated to the field. And finally, oversight inspections would be conducted "for cause" only, based on initial reviews and self-inspections by the Labs themselves.

Ladies and gentlemen, this devolution of the few authorities reserved to the DOE is in direct conflict with the serious negligence identified in both Congressman Cox's Report and that of the PFIAB. It is the organizational equivalent of sending the fox in to count the hens. The head of such an eviscerated organization could hardly be called a Czar. This proposal-developed by the Labs at a cost of almost 2 million dollars - is a perfect example of the organizational and policy interference by the Labs that is also documented in the PFIAB report.

PERSONNEL

I would be less than forthcoming if I failed to mention the most positive aspect of the Department's safeguards and security program. The program is staffed by hard working dedicated men and women throughout the country, both Federal and contractor, who are firmly committed to protecting the critical national security assets entrusted to their care. The responsibilities of these individuals are most demanding and frequently dangerous in many respects. Yet despite the dwindling resources available to them, these individuals continue to perform in an outstanding fashion. Where this

Department has failed is in providing these professionals the necessary resources and training to allow them to perform their responsibilities safely and appropriately. The Department has also failed to provide protection so that individuals will bring forward problems and deficiencies without fear of retaliation.

It is due to the professionalism and diligence of the DOE security workforce that progress has been made in some of the areas I previously addressed. However, the DOE field is strewn with the careers and reputations of security officers who have dared question the system or raise concerns for the security of our sites or the health and safety of the public. One site has had 5 Security Directors in a little over 2 years. The last, David Reidenour resigned in disgust after only 90 days, stating that he had never before been in a position where his duty to protect the health and safety of the public placed him in direct conflict with loyalty to his supervision. Men like Rich Levernier, Gary Morgan and David Reidenour are joined by contractor Security Directors like Bernie Muerrens and Link White who tried to do the "right thing" for the country and were rewarded by replacement or reprisal.

Numerous Security Police Officers responded to former Secretary O'Leary's call in 1994 to come forward without fear of reprisal only to suffer harassment. After the press conference was over and the cameras and microphones were turned off, they suffered reprisal as thanks for their efforts. Men like John Hnatio, Jeff Hodges, Jeff Peters and Mark Graff have all had their careers ruined for coming forward and addressing serious lapses in DOE security practices. This year, one of our best and longest serving Security Directors suddenly retired after attempting to take action against an employee who willfully violated security procedures and admitted a Russian visitor, under escort, to a security area at the Savannah River site. The DOE escort allowed the Russian to carry an uncleared laptop computer into the area, after being warned by the Security Office not to do so.

The Department's history of harassment and reprisal sends a very clear warning that this government does not want to attract or keep its best and brightest.

Despite current legislation, gaps exist in current employee protection specifically where security clearances or classified information may be part of the issue. Under some circumstances current organizations do not review claims of inappropriate or prohibited employment practices where these elements are present. Willful negligence has flourished in DOE and will continue to do so as long as officials can hide capricious and sometimes malicious acts behind the mantra of National Security. While I place no value higher than duty to my country, some forum must be identified or clearly chartered to assure everyone has a fair and impartial hearing and all have the same right to "due process" which we expect as citizens and is provided for provided by our Constitution.

Mr. Chairman, career civil servants are charged foremost with assuring the public health and safety, and the protection of our environment. However, if civil service is solely based on a personal whim, then the public will be protected and served only as long as it is politically expedient to do so.

Mr. BURTON. Dr. Leitner.

Dr. LEITNER. Mr. Chairman, members of the committee, I would like to express my appreciation for your collective concern over the mistreatment of career civil servants essentially for speaking "truth to power" concerning the systematic pillaging of the United States Defense industrial base and our Nation's most precious military and nuclear secrets by the People's Republic of China.

Appearing before you today is both an honor and a rather dubious distinction. To be victimized by my own government, particularly the Defense Department, for consistently putting the near- and long-term national security interests of the United States ahead of all other considerations, is something which I still find astounding to this day. I believe that a deadly combination of corruption, greed, careerism, indolence and possibly darker motives have brought us to this sad turning point in the nature of the military threats to the United States and countries along the Chinese periphery, extending from the Central Asian republics through the Indian Ocean and along the Pacific Rim.

My particular story revolves around my documenting evolving military threats to the United States spurred by reckless transfers of advanced Western technology, technology capable of allowing potential military rivals such as the PRC to leapfrog generations of technological development and trillions of dollars of expenditures and to field advanced weapons systems faster than our experts have predicted. I have been systematically penalized for my initiative and efforts.

From 1986 through 1990, I was consistently praised by DOD officials for my effectiveness in documenting and persuasively defending American technology security interests around the world in international negotiations, but all that changed in 1990. That is when I authored the memo and charts presented as attachment A to my written testimony. That memo pointed out dangerous flaws in the methodology DOD was using in determining which technology to drop from international export control lists. For the mere act of composing this message for my chain of command, I was summarily recalled from Paris and ordered to get on the next flight home, where I was confronted by the first in a series of DTSA managers who place their personal interests and career advancement ahead of all else. I was told, "You are to be placed in a position of least trust in this organization: licensing." A remarkable statement as export licensing is the raison d'etre for the organization.

After my being banished into licensing, I began to detect a disturbing pattern of Indian acquisition of United States and British parts and components for their attempt to build a so-called indigenous supercomputer. I wrote a paper on this issue that received the support of the Defense Intelligence Agency and numerous technical experts. The DOD response: I was barred from looking at export licenses involving India.

After these two incidents, my performance appraisal dropped from outstanding to an entire grade lower. My supervisor at the time told me he was ordered by the Director and Deputy Director of DSIA not to give me an outstanding rating. He then advised me that he would lower my written communication category because, after all, it was my memos that resulted in all of this.

Earlier that year, I had been told I would be given a quality step increase as a result of my outstanding performance. This was quickly scrapped and I was denied a $2,600 pay raise. This was to be the first in a series of retaliatory financial sanctions which, in my reckoning, has cost my family between $75,000 to $100,000 to date, and over the course of my lifetime, certainly much more. The loss of income punishes not only me, but also my wife and four children.

In May 1991, I authored a technical paper entitled, "Garrett Engines to the PRC: Enabling Its Long-range Cruise Missile Program." The controversy generated by this paper ran well into 1992 but eventually stopped a potentially disastrous technology transfer from taking place. The new administration was fighting tooth and nail to approve the transfer of cruise missile manufacturing technology to the PRC. While the technology transfer was prevented and the potential threat to the United States mitigated, I was nonetheless punished for my having been right.

In 1994, I wrote a technical paper entitled, "McDonnell-Douglas Machine Tool Sales to the PRC: Implications for U.S. Policy," and refused a direct order to change my denial of the transfer of the Columbus, OH, B–1 bomber/MX missile/C–17 plant to China. The incident was the subject of a recent 60 Minutes broadcast.

Later, I co-authored a study entitled, "Transferring Stealth Technology to the PRC: Three Pieces to the Chinese Puzzle." This paper revealed how the PRC was targeting United States companies for technology acquisition with surgical precision.

Late in 1995, a series of events heralded a new round of internal retaliation against me. First was the publication of my first book, "Decontrolling Strategic Technology, 1990–1992: Creating the Strategic Threats of the 21st Century." The reaction of DTSA management, after desperate attempts to prevent publication of the book, was to artificially lower my performance appraisal and insert all manner of political language into my civil service rating. I appealed the rating, and while the score was raised somewhat, the political language was allowed to stand and I was again penalized financially.

In 1997, reprisals began to intensify upon the publication of my second book and my being invited to appear before the Joint Economic Committee to discuss Chinese economic espionage and strategic technology transfer. Just before the hearing was to convene, DTSA management held a Directors meeting, where it was announced that no DTSA employees would be permitted to attend that hearing, and if any applied for annual leave for that purpose, it would be denied.

It was in December 1997 that a campaign to further isolate me began; this time to confiscate my office computers, a laptop and a desktop. I was told DTSA management was afraid that I may use the computers to write testimony, books, or articles critical of DTSA actions or policies. Therefore, DTSA management reasoned, take the computers away and I will no longer be able to write or testify.

About this time, I began to see and issue denials for a large number of export licenses originating with the DOE sponsored national laboratories. These licenses were to transfer a variety of high-tech

equipment with direct applications to nuclear weapons development to Russia and China. I objected then and continue to object today to these so-called lab-to-lab transfers because there was no evidence of a security plan to protect U.S. technologies from being used against us. There was no evidence that the Department of Energy exercised any credible level of control over these activities. And after meeting with lab officials, it was apparent to me that the labs had become entrepreneurial and were creating programs, as much to resolve the loose nukes program, as it was to keep themselves employed and to avoid layoffs.

In 1997, I witnessed the intentional orchestration by the administration of a series of events resulting in the false certification to Congress that China is not a nuclear proliferant. This provided the Chinese legal access to many nuclear technologies to complement that which they were engaged in stealing.

I am proud to have been associated with Mr. Jonathan Fox, who had the courage to do what extremely few in government appear capable of doing these days: that is, recognizing and telling the truth.

In April 1998, I again appeared before the Joint Economic Committee to discuss continuing problems with the growing strategic threat from China. Next I was subpoenaed to appear before the Senate Governmental Affairs Committee in June. My Senate testimony resulted in an investigation by the Inspectors General of six agencies of the management of the export control process.

In August, I was called before the Cox/Dicks committee where I testified on the PRC threat and worked very closely with that staff, providing over 18 inches of documents and hours of follow-up interviews with staff.

Ever since these testimonies, I have been subjected to, in staccato fashion, one adverse harassing act after another; the most prominent of these, further lowering of my performance rating, attempts to isolate me from attending meetings concerning nuclear exports—particularly when the IGs were visiting the interagency meetings as part of the followup on the Senate-requested investigations—a trumped-up letter of reprimand; sick leave harassment; a falsified charge of security violation, Colonel McCallum is well aware of how that affects you; and implied threats to charge me with insubordination or defiance of authority.

These actions were deemed so serious that Senator Thompson twice wrote to the Pentagon, including to Secretary Cohen, expressing concern for his witness. In addition, the Office of Special Counsel has accepted my case for a full investigation of political reprisals and illegal retaliation.

The politization of the career civil service is an extraordinarily dangerous and insidious process aimed at co-opting, bypassing or eliminating unbiased professionals. Without a nonpartisan professional civil service, this Nation will be subjected to wild mood swings and radical policy changes that will wreak havoc. The professional career civil service is, in a manner of speaking, a dampening force, or, the Ritalin in the body politic which prevents dangerous and intemperate initiatives from getting out of control.

DOD routinely engages in two questionable personnel practices: the militarization of DOD's civil service, by allowing widespread

conversions of military personnel to civilian positions; and the inappropriate, possibly illegal use, of the Intergovernmental Personnel Act to directly appoint individuals without competition and avoid ceilings on political appointments. In many cases, particularly within the Defense Threat Reduction Agency, civil servants with decades of expertise in strategic weapons programs were shoved aside and demoted, while DOE lab employees were brought in to fill their posts.

Between downsizing, contracting out, military rehires, and the abuse of the IPA program, the fundamental relationship and connectedness of government to the general population is being radically altered.

I would like to call upon members of the Civil Service Oversight Committee to investigate the developments I have just described and prepare a legislative remedy to ensure that the congressional vision of the character of the career civil service and its importance to a free and open society is mirrored by reality.

In the meantime, Congress should act swiftly to ensure that the pay cap on double dipping by retired military personnel be kept firmly in place. Removing the dual-compensation ceiling will only exacerbate the problems I have outlined above.

It has been almost exactly a year to the date, June 28, 1998, that I gave sworn testimony before the Senate Governmental Affairs Committee on the sad state of the export control process. It was 1 year prior to that testimony when Michael Maloof and I went to the DOD Inspector General's office to request a formal investigation of technology transfer to China and the national security threats it was creating. We were quite surprised when an IG Division Director said he was not interested in what we had to say and bluntly asked us to leave; simply threw us out.

Is it any wonder that almost 10 months after Senator Thompson directed the IGs of the Defense, Commerce, State, Energy, Treasury, and CIA to undertake an extensive review of the export licensing process, that the DOD report is very weak? It does not reflect many of the issues brought up by DOD personnel.

Should I be surprised that of the six IGs directed to followup on the concerns I expressed to the committee, only one, the DOD IG, even attempted to contact me? While I spent many hours speaking to the DOD IG, the reams of evidence I presented were minimized or shrugged off with statements like, "It is beyond the scope of our audit."

In fact, the Air Force's preliminary review of the draft report excoriated the IG on many issues.

Tragically, nowhere in this government are analyses being performed to assess the overall strategic and military impact of these technology decontrols I described in my testimony before the Joint Economic Committee. Nor are any analyses being performed on the impact of the day-to-day technology releases being made by the dysfunctional export licensing process. Yet it is precisely at the big-picture level where the overall degradation of our national security will be revealed. Without such assessments, the government will continue to blunder along, endangering the lives of our citizens unnecessarily.

On three separate occasions, I formally recommended the creation of a modeling simulation and research branch which would be dedicated to conducting such cumulative and tactical impact assessments. To date, the only cumulative impact assessments created within DTSA are those which I undertook independently and for which I was routinely subjected to reprisal.

It is amazing to me how much time and effort has been spent on attempts to break or contain me, rather than monitor, analyze and protect our national security. I cannot begin to count the number of times I have been asked, "How do you put up with this treatment? How do you manage to survive in that environment?" Of course, the correct question should be: Why are people with such mean and self-serving agendas allowed to flourish, even be rewarded, for engaging in such ruthless and destructive behavior?

As with the case of the six IGs, where only one deigned to contact me regarding the concerns I expressed to the Senate, why is it that at no time over these past 9 years has even one DOD official in my chain of command called me in to hear and perhaps even address the issues I raised? Even though DOD officialdom has been summoned to testify in open hearings and respond to my congressional testimony, I have yet to be called or invited to speak with anyone inside the Defense Department. Rather than address the issues, DOD's hierarchy appears more comfortable with targeting me for their minions to exact punishment and penalties, with the apparent goal of destroying my career.

I am well aware that every move I make is being intentionally misconstrued by several henchmen within my organization as part of some next step in the retaliation process. The increasingly politicized and compliant bureaucracy cannot be relied upon to restore balance to the system. Only detailed and vigorous congressional oversight is capable of preventing these excesses and the dangerous legacy from undermining our children's future. Thank you.

Mr. BURTON. Thank you, Dr. Leitner. Very illuminating.

[The prepared statement of Dr. Leitner follows:]

Testimony of

Dr. Peter M. Leitner

before the Committee on Government Reform of the United States House of Representatives

June 24, 1999
10:00 a.m.

REPRISALS & RETALIATION: SPEAKING TRUTH TO POWER ON CHINA

Mr. Chairman, members of the committee, I would like to express my appreciation for your collective concern over the mistreatment of career civil servants for "speaking truth to power" concerning the systematic pillaging of the U.S. defense industrial base and our nation's most precious military and nuclear secrets by the People's Republic of China. Appearing before you today is both an honor and a rather dubious distinction. To be victimized by my own government - particularly the Defense Department - for consistently putting the near- and long-term national security of the United States ahead of all other considerations is something that I still find astounding to this day.

I believe that a deadly combination of corruption, greed, careerism, indolence, and possibly darker motives have brought us to this sad turning point in the nature of the military threats to the United States and along the Chinese periphery - extending from the Central Asian republics through the Indian Ocean and along the Pacific Rim.

History of Reprisals

My particular story revolves around my documenting evolving military threats to the United States spurred by reckless transfers of advanced Western technology, — technology capable of allowing potential military rivals such as the PRC to leapfrog generations of technological development and trillions of dollars of expenditures and to field advanced weapons systems faster than our experts have predicted. I have been systematically penalized for my initiative and efforts. From 1986 to 1990 I was consistently praised by DoD officials for my effectiveness in documenting and persuasively defending American technology security interests around the world in international negotiations. At that time I was DoD's principal CoCom negotiator and

head of the DoD team on such issues as machine tools and manufacturing technology, advanced materials, and, for a time, computers. In addition, I served as chairman of a Paris-based military study group on advanced materials for weapons systems that turned out 15 reports and as the head of the U.S. team to another group on defense production technology and test equipment.

But all that changed in 1990, shortly after I received a Special Act Award for preparing the Under Secretary and Assistant Secretary for Policy to effectively argue in favor of rigorous machine tool controls. That was when I authored the memo and charts included as Attachment A. That memo pointed out dangerous flaws in the methodology DoD was using in determining which technology to drop from international export control lists. For the mere act of composing this message to my chain of command I was summarily recalled from Paris at 5 a.m. and told to abandon my technical team in France and get on the next flight home. There I was confronted by the first in a series of DTSA managers who place their personal interests and career advancement ahead of all else. I was told, "You are to be placed in a position of least trust in this organization - licensing." A remarkable statement as export licensing is the legislative raison d''tre for the organization.

After being banished into licensing, I began to detect a disturbing pattern of Indian acquisition of U.S. and British parts and components for India's attempts to build a so-called indigenous supercomputer. I wrote a paper on this issue (**U.S./India Relationship: What Are the Ground Rules?**) that received the support of the Defense Intelligence Agency and numerous technical experts. In response, I was barred from looking at licenses involving India. After these two incidents, my performance appraisal dropped from "outstanding" to an entire level lower. My supervisor at the time told me he was ordered by the Director and Deputy Director not to give me an outstanding rating. He then advised me that he would lower my "Written Communication" category because "after all, it was your memos that resulted in all of this." Earlier that year I had been told I would be given a quality step increase as a result of my outstanding performance. This was quickly scrapped, and I was denied that $2,600 pay raise.

This was to be the first in a series of retaliatory financial sanctions, which, in my reckoning, has cost my family between $75,000 and $100,000 to date and over the course of my lifetime certainly much more. This loss of income punishes not only me but also my wife and four children.

In May 1991, I authored a technical paper entitled **"Garrett Engines to the PRC: Enabling Its Long-range Cruise Missile Program."** The controversy generated by this paper ran well into 1992 and eventually stopped a potentially disastrous technology transfer from taking place. The new administration was fighting tooth and nail to approve the transfer of cruise missile manufacturing technology to the PRC. I was internally vilified and later penalized even though the Air Force, CIA, and Arms Control and Disarmament Agency came around to support my position. While the technology

transfer was prevented and the potential threat to the United States mitigated I was nonetheless punished for having been right.

In 1994, I wrote a technical paper called **"McDonnell Douglas Machine Tool Sales to the PRC: Implications for U.S. Policy"** and refused a direct order to change my denial of the transfer of the Columbus, Ohio, B-1 Bomber/MX Missile/C-17 plant to China. This incident was the subject of a recent *60 Minutes* broadcast. Later that year I co-authored a study entitled **"Transferring Stealth Technology to the PRC: Three Pieces to the Chinese Puzzle."** This paper revealed how the PRC was targeting U.S. companies for technology acquisition with surgical precision. In 1995, I took the initiative and prepared a policy paper called **"Nuclear Safety, Strategic Technologies, and Weapons Proliferation: A New Approach."** This was an attempt to reduce Indian access to nuclear weapons-related technologies while assisting India on the civilian nuclear safety issue. Prepared and circulated fully three years before the most recent round of nuclear weapons tests in the Thar Desert, neither the paper nor the initiative was acted upon by DTSA management despite strong support for many elements of the approach internally and externally.

Late in 1995 a series of events heralded a new round of internal retaliation against me. First was the publication of my book **"Decontrolling Strategic Technology, 1990-1992: Creating the Strategic Threats of the 21st Century."** This was followed, in early 1996, by my paper on **"Dual-use Exports and Naval Nuclear Propulsion: Denying Exports to Brazil"**; third was my active opposition **(Non-Nuclear, Militarily Critical Uses of Oscilloscopes)** to a DoE-led effort to decontrol oscilloscopes and remove them from the Nuclear Suppliers Group list of proliferation- related technologies. The reaction of DTSA management, after desperate attempts to prevent publication of my book, was to artificially lower my performance appraisal and insert all manner of political language into my Civil Service rating. I appealed the rating and while the score was raised somewhat, the political language was allowed to stand and I was again penalized financially. At one point, DTSA attempted to insert a criteria stating that my licensing decisions had to meet with the approval of my supervisor at least 90 percent of the time.

Examples of the political characterizations inserted into my Civil Service performance appraisal as criticisms include:

- "Dr. Leitner is an advocate of tightening export controls."
- ". . . he veers to the right as much as possible."
- "Some of his denial recommendations push the envelope towards tighter control."
- "He is my most conservative/cautious licensing officer."

In 1997, reprisals began to intensify with the publication of my second book, **"Reforming the Law of the Sea Treaty: Opportunities Missed, Precedents Set, and U.S. Sovereignty Threatened,"** and my being invited to appear before the Joint Economic Committee to discuss Chinese economic espionage and strategic technology transfer. Just before the hearing was to convene, DTSA management held a "Directors"

meeting where it was announced that "no DTSA employees will be permitted to attend that hearing and if any apply for annual leave for that purpose it will be denied." When I circulated the JEC announcement of the time and place of the hearing to my co-workers on the office E-mail system attempts were made to somehow construe this as a "security violation." My testimony was entitled **"Feeding the Dragon: Technology Transfer and the Growing Chinese Threat."**

Two articles published in 1997, **"Ethics, National Security, and Bureaucratic Realities: North, Knight, and Designated Liars"** and **"Supercomputers, Test Ban Treaties, and the Virtual Bomb,"** were met with immediate hostility within DoD. The first looks at people who lie to Congress - the designated liar for their agency. The second reveals the nuclear proliferation dangers and suspect agenda of the administration in decontrolling supercomputers - a mistake about to be compounded as we speak. In June 1997, Mr. James Cole and I authored a study entitled **Minimum Requirements to Produce Machine Tools Capable of Manufacturing Weapons of Mass Destruction**.

It was in December 1997 that a campaign to further isolate me began - this time to confiscate my office computers, a laptop and a desktop. It began with an outright lie that the information management staff wanted the laptop assigned to me returned. Then my desktop unit was removed as well. I was told verbally and in writing by the information management staff that they never asked for the return of the computers and that they would only declare the machines excess and get rid of them. They also said that DTSA management was afraid that I might use the computers to write testimony, books, or articles critical of DTSA actions or policies. Therefore, DTSA management reasoned, take the computers away and I will no longer be able to write or testify.

About this time, I began to see and issue denials for a large number of export license applications originating with the DoE-sponsored national laboratories-particularly Los Alamos, Sandia, Livermore, and Oak Ridge. These licenses were intended to facilitate the transfer of a variety of high-tech equipment with direct application to nuclear weapons development and testing to the most dangerous entities within the Russian nuclear weapons design, test, and manufacturing complex. I objected then, and continue to object today, to these so-called Lab-to-Lab transfers because there was no evidence of a security plan to protect U.S. technologies from being used against us, there was no evidence that the Department of Energy exercised any credible level of control over these activities, and after meeting with lab officials it was apparent to me that the labs had become entrepreneurial and were creating programs not so much to resolve the fictional "loose nukes" problem as to keep themselves employed and avoid layoffs. Some of these programs go by the titles Materials Protection, Control, and Accounting Program, Initiatives for Proliferation Prevention, Nuclear Cities Program, MAGO program (assisting the Russians to refine and miniaturize an Electro-Magnetic Pulse weapon), etc. Given my knowledge of how badly managed DoE's nuclear stockpile program was, I found it amazing that DoE was holding itself up as the paragon of virtue in these areas. My concerns were strongly validated by the Cox/Dicks Committee and the President's Foreign Intelligence Advisory Board. In the meantime, I

was lectured by my supervisor that "the Russians are our friends" and I have "no business standing in the way of these DoE run programs." I refused to alter my denial recommendations and virtually all of my denials were overturned by DTSA management. GAO later confirmed that more than 50 percent of the tax dollars going into many of these programs were spent in the United States on overhead and little if any results can be shown regarding lessening the nuclear threat facing the United States. For these efforts I was again given a poor performance evaluation and penalized financially. The following is representative of the denial positions I recommended on such cases;

DOD POSITION: 20 NOVEMBER 1996
DENY

Per Section 10g of the EAA and Sections 770.1 and 778.3 of the EAR DoD is recommending denial of this application. End-user is an unsafeguarded nuclear facility and this device is capable of making a material contribution to proliferation projects of concern.

DoD will either deny or return without action any cases which fall within this lab-to-lab framework which are not accompanied by a narrative describing how and why a particular item was selected, a national security impact assessment, a description of how it fits into the program it is to support, and specific points of contact at the lab sponsoring the transaction. In addition, DoE should provide a copy of their security plan covering each of the agreements.

DoE involvement in a materials accounting project notwithstanding, the end-user is a facility of great concern both for weaponization and naval propulsion reasons. As the commodity and the device it will power will be under the control of the Russian end-user there will be virtually no accountability for its eventual end-use. In addition, the portable nature of the equipment makes it quite suitable for maintaining strategic weapons and propulsion systems in the field, which would help to improve the operational readiness of Russian nuclear and naval forces.

This and related cases raise serious concerns as to whether the verification inspection, inventory, monitoring programs -- of which there appear to be scores -- are out of control. In every case which has crossed my desk the U.S. side of the agreement is some sort of private contractor operating on behalf of the USG. More often than not it is a contractor-run national lab which is negotiating and committing the United States to fairly open-ended programs of assistance and technology transfer. The export control process is then faced with license applications to transfer specific technologies directly to the some of the most sensitive areas of the Former Soviet Union (FSU) nuclear weapons complex where they will simply be turned over for

permanent unverifiable use in facilities of greatest strategic concern.

The justification given for approval is that the U.S. contractor says it is needed to support the program all indications are that the various cooperative programs with the FSU initiated over the past few years are basically lab-to-lab agreements which have some, but very limited, direct USG oversight. Instead, day-to-day functioning of these agreements is left to the contractors to decide what technology is (or is not) relevant, required, or even desirable to transfer to the FSU. Whether national security concerns are factored in is not evident in any of the applications for export licenses submitted for approval. Unfortunately, contractors are given to focus upon the achievement of milestones and satisfying their clients, in this case DoE and Russia. With such a focus, quibbling over specific capabilities regarding a piece of equipment is not something that will be given attention. Yet it is precisely this sort of micro-evaluation which is at the heart of the export control process and must be performed for the system to function. There is no sign that such analysis is being performed at present in regard to these Lab-to-Lab agreements.

In almost every such case, licensing analysts are rubber-stamping approvals based upon the simple test of whether "it looks reasonable and appears to fit within the lab-to-lab agreement." One cannot even tell whether the FSU requested specific equipment or if the U.S. side recommended it; or whether the FSU rejected a recommended piece of hardware and insisted on a much more advanced device capable of performing tasks beyond those called for under the scope of the program. This was certainly the case with the super computers bound for Arzamas and Chelyabinsk, and not required by the lab-to-lab agreement which was being cited as cover for this unjustified export.

Other USG agencies are deferring to DoE on these cases and incorrectly assuming a degree of control and analysis which doesn't appear to be present. There is no evidence that real analysis or oversight is actually being performed. Instead we are all being asked to "believe" that the technology being transferred is the minimum required to perform the task cited and that there is little to no risk to U.S. security.

In 1997, I witnessed the intentional orchestration by the administration of a series of events resulting in the false certification to Congress that China is not a nuclear proliferant. This provided the Chinese legal access to many nuclear technologies to complement that which the committee so clearly demonstrated they were engaged in

stealing. During that year, I witnessed the development of the twisted logic that since the PRC lost out in a head-to-head competition with Russia to sell Iran a nuclear reactor complex it can be construed as being forthcoming on proliferation issues. The fact that the Chinese withdrew their offer to provide Iran a nuclear reprocessing plant only after they lost the contract was interpreted by the administration as an opportunity to "sell" China to Congress.

In April 1998, I again appeared before the Joint Economic Committee to discuss continuing problems with the growing strategic threat from China. Next I was subpoenaed to appear before the Senate Governmental Affairs Committee in June where I testified about the intentional systematic failure of the export control process, as structured by this administration, to protect America's precious military technology advantage. My Senate testimony resulted in an investigation by the Inspectors General of the management of the export control process by the Defense, Commerce, State, Treasury, and Energy Departments and the CIA. In August I was called before the Cox/Dicks Committee where I testified on the PRC threat and worked very closely with that staff - providing over 18 inches of documents and hours of follow-on interviews with staff. Ever since these testimonies I have been subjected to, in staccato fashion, one adverse harassing act after another. The most prominent of these are: further lowering of my performance rating, attempts to isolate me from attending meetings concerning nuclear exports -- particularly when the IG's were visiting the interagency meetings pursuant to the Senate inspection request, a trumped-up letter of reprimand, sick leave harassment, a falsified charge of a security violation, and implied threats to charge me with insubordination or defiance of authority. In fact, the DoD IG found that of the 16 DTSA licensing officers I am the only one not to receive a bonus, or an outstanding or superior rating, this in spite of the fact that I am the only person to have authored any technical or policy analyses or to have stood up for DoD's national security mission in the face of interagency obstructionism. All of this happened since my Cox/Dicks testimony. These actions were deemed so serious that Senator Thompson twice wrote to the Pentagon, including to Secretary Cohen, expressing concern for his witnesses. In addition, the Office of Special Counsel has accepted my case for a full investigation of political reprisals and illegal retaliation.

Dangers Facing Civil Servants Today

The politicization of the career Civil Service is an extraordinarily dangerous and insidious process that has been more radically advanced during the past six years than at any time since the enactment of the Hatch Act. Today's hearing is a microcosm of an insidious process aimed at co-opting, by-passing, or eliminating unbiased professionals from the policymaking/implementation process. Without a nonpartisan professional civil service this nation will be subjected to wild mood swings and radical policy changes that will wreak havoc pursuant to the particular agenda of, not a particular elected government per se, but the armies of non-elected appointees who are often the advocates of extremist

positions. The professional career Civil Service is, in a manner of speaking, a dampening force, or, the Ritalin the body politic, which prevents dangerous and intemperate initiatives from getting out of control.

Unfortunately, the present administration has so weakened and abused the structure of the career civil service that legions of sycophants, carpetbaggers, and plain old crooks have supplanted civil servants in many key positions. DoD routinely engages in two questionable personnel practices: the militarization of DoD's civil service by allowing widespread conversions of military personnel to civilian positions, and the inappropriate, possibly illegal, use of the Intergovernmental Personnel Act to directly appoint individuals without competition and avoid ceilings on political appointments. In many cases, particularly within the Defense Threat Reduction Agency, civil servants with decades of expertise in strategic weapons programs were shoved aside and demoted from key positions while DoE lab employees were brought in to fill their posts. These lab employees/IPA Fellows are then given a strong voice in which programs are pursued and which research facilities are awarded applied/or basic research contracts. This is featherbedding at its worst - allowing an eventual beneficiary of a program to determine how and where money is to be spent—yet this is how DTRA is structured. Even the head of the organization is not a civil servant but an IPA Fellow from Lawrence Livermore National Lab, one of DoE's problem children.

Between downsizing, contracting out, military rehires, and the abuse of the IPA program the fundamental relationship and connectedness of government to the general population is being radically altered. It is a mistake to assume that the military personnel who are being allowed to "jump the line" today, and unfairly receive government jobs (25 percent of DTSA's "civilian" staff are retirees previously assigned there) ahead of the tens of thousands losing their jobs due to base closures and downsizing, are the same as the WWII, Korean, or Vietnam War citizen soldiers. Today's military retirees, particularly the officer corps, are careerists with a much more tenuous connection to civil values and norms than previous generations of draftees. All veterans are not the same. In fact, the proximity of career civil servants to the American people is clearly receding. The shrinking pool of nonpartisan professionals is instead being replaced by contractors, IPAs, political appointees, and others who are motivated more by profit than the spirit of dedicated public service. Whose interests are advanced or protected in this situation - good government, the American people, or special interests?

The overwhelming inclination of many career military people who are dropped into a civilian policy setting, is to find, or invent, an S.O.P. (Standard Operating Procedure) manual that will tell them what to do every step of the way. Often the ambiguity of civilian policy issues imparts an air of desperation to those accustomed to a more rigid, defined, routine existence. Questioning authority, or pointing out inconsistencies/contradictions in policy implementation is an activity many find hard to cope with. For instance, when I made an issue out of the Israeli Arrow missile program having changed to the point that U.S. assistance may be in violation of our commitments under the international Missile Technology Control Regime (MTCR), I was castigated for

even raising the issue. Never mind that that the MTCR is one of the cornerstones of U.S. non-proliferation policy or that the U.S. publicly accuses other nations of violations (i.e., the PRC/Pakistan M-11 transfers). Instead of engaging in a productive discussion I was told:

> Since the Arrow program had the support of the Congress and is executed through a GOI-USG MOU, I fail to see how any individual with your tenure in export controls could propose such a position.

I would like to call upon members of the civil service oversight committees to investigate the developments I have just described and prepare a legislative remedy to ensure that the congressional vision of the character of the career civil service and its importance to a free and open society is mirrored by reality. In the meantime Congress should act swiftly to ensure that the pay cap on "double-dipping" by retired military personnel be kept firmly in place. Removing the dual-compensation ceiling will only exacerbate the problems I have outlined above.

Failure of the Inspector General

It has been almost exactly one year to the day (June 28, 1998) that I gave sworn testimony before the Senate Governmental Affairs Committee on the sad state of the export control process. It was one year prior to that testimony when Michael Maloof and I went up to the DoD Inspector General's Office to request a formal investigation of technology transfer to China and the national security threats it was creating. As part of our request we described the internal mismanagement of the export control process by DTSA managers and retaliatory acts they were engaged in for those who offer unpopular opinions or positions on issues concerning China. We were quite surprised when an IG Division Director said he was not interested in what we had to say and bluntly asked us to leave.

Is it any wonder that almost ten months after Senator Thompson directed the IG's of the Defense, Commerce, State, Energy, and Treasury Departments and the CIA to undertake an extensive review of the export licensing process that the DoD report is very weak? It does not reflect many of the issues brought up by DoD personnel. Should I be surprised that of the six IG's directed to follow up on the concerns I expressed to the Committee only one, the DoD IG, even attempted to contact me? While I spent many hours speaking to the DoD IG, the reams of evidence I presented were minimized or shrugged off with statements like "That is beyond the scope of our audit." While I have extensive notes highlighting the fatal weaknesses in the DoD report I think that the point can be better made by paraphrasing from the Air Force's preliminary review of the draft report, which excoriated the IG for rampant failure to utilize evidence provided, downplaying major issues, and ignoring corroborating material provided by not only the Air Force, but the Army, Navy, and NSA as well.

In part, the Air Force stated:

> The audit report based on word usage, semantics, and omission of significant and relevant documentation substantially misrepresented the documented facts, submitted by the Air Force. The seriousness of congressional testimony and the related congressional concerns that prompted this audit are downplayed when compared with the facts reported by Air Force and which are in documented OUSD databases, files and directives.
>
> Those questions and requests from the DoD IG, on behalf of Congress took approximately 325 hours to perform research and answer specific requests for the Congressional inquiry. Approximately 194 specific questions were answered. Thirty-three typed pages were prepared with approximately 74 specifically detailed attachments. Over 124 historical records were reviewed and an additional 9,896 e-mails were individually reviewed and evaluated for the DoD IG. Air Force examined over 16 linear feet of Air Force records in order to answer the DoD IG questions.
>
> This documentation revealed: the unauthorized release of classified futuristic space technology to foreign countries which negatively impacted both U.S. military and U.S. industry interests; the Defense Intelligence Agency's non-review of over 99% of all submitted munitions licenses; intimidation and related acts against export licensing officers; and the alteration and deletion of not only submitted positions of agencies but also the deletion of the coordinated office.
>
> Only one reference could be found to an Air Force input. That input was in regard to training and that was semantically in error.
>
> The DoD IG downplayed and failed to reference the potential compromise of numerous advance Air Force systems, directly related to actions by DTRA. The DoD IG never provided to Air Force specific documents that they requested our comments on, despite repeated requests by Air Force. The fact that the DoD IG promised to provide such information, on several occasions, yet elected to finalize a report to Congress purporting a collective DoD response is disturbing.

It is amazing how much time and effort is spent on attempts to "break" or "contain" me rather than monitor, analyze, and protect our national security. I cannot begin to count the number of times I have been asked "How do you put up with that treatment? How do you manage to survive in that environment?" Of course, the correct question should be; why are people with such mean and self-serving agendas allowed to flourish, even be rewarded, for engaging in such ruthless and destructive behavior?

As with the case of the 6 IG's, where only one deigned to contact me regarding the concerns I expressed to the Senate, why is it that at no time over these past 9 years has even one DoD official in my chain of command called me in to hear and perhaps even address the issues I raised? Even though DoD officialdom has been summoned to testify in open hearings, and respond to my congressional testimony, I have yet to be called or

invited to speak with anyone inside the Defense Department. Rather than address the issues, DoD's hierarchy appears more comfortable with targeting me for their minions to exact punishment and penalties with the apparent goal of destroying my career. I am well aware that every move I make is being intentionally misconstrued by several henchmen within my organization as part of some next step in the retaliation process.

A DoD That Won't Say No

The Defense Department was the leader in successful efforts to decontrol exports of supercomputers capable of processing vast quantities of complex information, and it supplied funding and other forms of assistance to contractors hired to justify preconceived policy initiatives in this regard. In a strategic context, such computer systems typically figure in weapons development laboratories, nuclear weapon simulation and modeling facilities, ICBM warhead design activities, and a host of other critical military applications. DoD's leadership harked right back to the role played by the new DoD chain of command in decades-long efforts to reform [read scrap] the export control system centered at the National Academy of Sciences.

Was it any wonder that DoD officials were unhappy when the Congress mandated, in Section 1211 (a) of the National Defense Authorization Act for Fiscal Year 1998, that Commerce was required to forward to the Defense Department all computer license applications for systems exceeding a certain level of performance? This new authority was an unwanted gift to some in DoD who led the charge to decontrol the very computers Congress addressed in the law. The White House immediately sought to neutralize this congressionally mandated requirement by requiring the signature of an under secretary in order to object to such an export (see Attachment 4). The Commerce Department narrowed the window even more by refusing to recognize the right of DoD officials to delegate authority internally.

As we meet today, the administration appears poised to announce yet another round of unilateral supercomputer decontrols. This time many fear that administration excesses will extend well above the current unjustifiable 7,000 MTOPS level, probably to 20,000. In 1995, "President Clinton [unilaterally] decontrolled computers up to 2,000 MTOPS [from the previous CoCom ceiling of 260 MTOPS] for all users and up to 7,000 MTOPS for civilian use in countries such as Russia" and China. This will enhance proliferators' ability to pursue design, modeling, prototyping, and development work across the entire spectrum of weapons of mass destruction. The weapons design establishments of Russia and the People's Republic of China stand to reap the greatest benefit from further decontrol.

Technology Security vs. Balance of Trade

These philosophies are, of course, diametrically opposed. Technology sold to a potential adversary that can be used to close the technical gap between its military systems and ours diminishes our national security. Any short-term gain in our economy would, with this result, represent at best a Pyrrhic victory. The flip side to the argument is that by engagement our economy is improved. This provides incentives for increased R&D to maintain the technical gap. The biggest beneficiary in such a cycle would be the defense industry, which would be called upon to save us from our own trade policy.

The National Science and Technology Council Committee for National Security listed three conclusions in its Phase 1 Progress report briefing (28 April 1997):

1. Government controls over controlled technology are effective within legal and regulatory guidelines, but license decisions are generally made based on narrow evaluation factors and so do not include analysis of multidimensional and long- term effects.

2. The government does not have a comprehensive understanding of the effects on U.S. national security interests of the international flow of both controlled and uncontrolled technology.

3. Collecting and analyzing sufficient data to develop a comprehensive understanding of the international flow of both controlled and uncontrolled technology and its effects on U.S. national interests to determine if adjustments to policy are called for would be a major undertaking.

Controlled technology is being redefined as uncontrolled technology at an unprecedented rate and is being exported despite the fact that the government does not have a comprehensive understanding of the effects on national interests. While claims of "regulatory effectiveness" are made relative to controlled technology (again, which is being nearly defined out of existence), the government has no clue concerning multidimensional and long-term effects. Why? -- it would be a major undertaking and would almost certainly expose the recklessness of current export control policy.

The export control system works only when there is a strong degree of creative tension between agencies. This natural adversarial approach ensures full and open debate. In addition, it is vital that higher echelons be regular participants in the process, and this is achieved only through escalation of issues to their level. Pre-emptive surrender because one does not want to involve higher authorities or because one is afraid that escalation may be misinterpreted as a personal failure to resolve issues does a great disservice to the agency's mission, the process, and this nation's physical security. DoD's consistent pattern of weak or no opposition, capitulation, and failure to escalate

issues is the single greatest factor in the loss of tension from the system and its consequent failure to execute its mission.

Cumulative Impact

Tragically, nowhere in this government are analyses being performed to assess the overall strategic and military impact of the technology decontrols I described in my testimony before the Joint Economic Committee on June 17, 1997, and April 28, 1998. Nor are any analyses being performed on the impact of the day-to-day technology releases being made by the dysfunctional export licensing process. Yet, it is precisely at the "big picture" level where the overall degradation of our national security will be revealed. Without such assessments the government will continue to blunder along endangering the lives of our citizens unnecessarily. I was surprised when the Commerce Department's IG concluded in response to Senator Thompson's question:

> The current dual-use licensing process does not take into account the cumulative effect of technology transfers. While individual technology sales may appear benign, combining technology sales over a long period of time may allow U.S. adversaries to build weapons of mass destruction or other capabilities that could threaten our national security.

On three separate occasions I formally recommended the creation of a modeling, simulation, and research branch which would be dedicated to conducting such cumulative and tactical impact assessments. To date, the only cumulative impact analyses created within DTSA are those which I undertook independently and for which I was routinely subjected to reprisal. It is notable that the Commerce Department has recognized the importance of such an effort while DoD still ignores the issue. Perhaps the reason lies in the following passage from a 1993 memo from DoD's former DUSD for Counterproliferation to his boss the ASD for Nuclear Strategy and Counterproliferation. In describing the role of DTSA in DoD's pecking order, he stated:

> . . . it helped to assure that the [Assistant Secretary] and the [Under Secretary] were insulated from most (but not all) of the mind-numbing, arcane details of the world of export controls . . .

Perhaps, some day, DoD will be blessed with a leadership possessing the intellectual curiosity, capacity, and attention span necessary to effectively protect America's national security equities in this "arcane" but vital field. In the meantime, however, the special interest juggernaut continues its steamroller tactics in attempting to "mow down" whatever is left of the export control process. Like the two-minute warning in a football game, the remaining 18 months of the present administration will witness a renewed assault on the concept of national security export controls. The upcoming supercomputer decontrol decision, new DoD initiatives to back itself out of the munitions licensing business, and an internal move to speed up export licenses for some of the key players in the China space launch fiasco—the event that gave birth to the Cox/Dicks

Committee—are only the first in what promises to be a desperate push to completely gut the process. The increasingly politicized and compliant bureaucracy cannot be relied upon to restore balance to the system. Only detailed and vigorous congressional oversight is capable of preventing these excesses and their dangerous legacy from undermining our children's future.

OFFICE OF THE SECRETARY OF DEFENSE

WASHINGTON, D.C. 20301

May 30, 1990

MEMORANDUM FOR DUSD/TSP

SUBJECT: Strategic consequences of JCS-led CoCom decontrol exercise

It has come to my attention that during the course of the ongoing massive revision of the CoCom embargo list responsible DoD/JCS officials appeared to have overlooked the overall strategic consequences of their recommendations. As such an arms-length review is essential to any policy decision regarding the final list for deletion I have taken the liberty of correlating those items proposed for release or drastic decontrol against known Soviet weapons systems.

To date I have completed a review of the SU-27, the most advanced supersonic tactical fighter in the Soviet inventory and one known to have already benefited from stolen Western technology. The results of my analysis reveal that the net result of the decontrol measures proposed by DoD would provide to the Soviets a generational leap forward in tactical military capabilities which would provide them with rough equivalency with our own Advanced Tactical Fighter (ATF/ATA) currently under development at a cost of billions of taxpayers dollars.

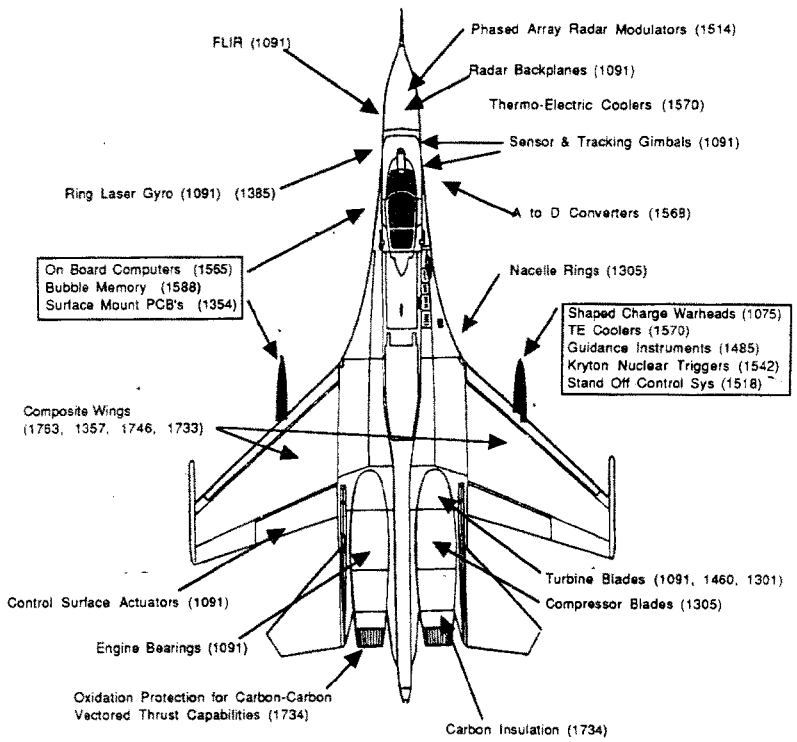
In addition, improvements in missile technology which would enable the Soviets to develop highly maneuverable air-to-air, air-to-ground and surface-to-air missiles as well as smart stand-off control technologies represent a series of Gap-Closers of the first magnitude.

These improvements are displayed on the attached chart. As shown, there is virtually no mechanical, electronic, material or sensor system which is not impacted by the DoD proposals. The cumulative impact of the JCS recommendations must be addressed and specific items must be withdrawn from consideration for decontrol. The alternative is the release of next-generation military aviation capabilities to the Soviet Union even as the U.S. taxpayer is being asked to fund the development of similar capabilities for U.S. forces.

Please forward the attached analysis to JCS for their review and formal response as soon as possible.

Peter M. Leitner
Senior Strategic Trade Advisor

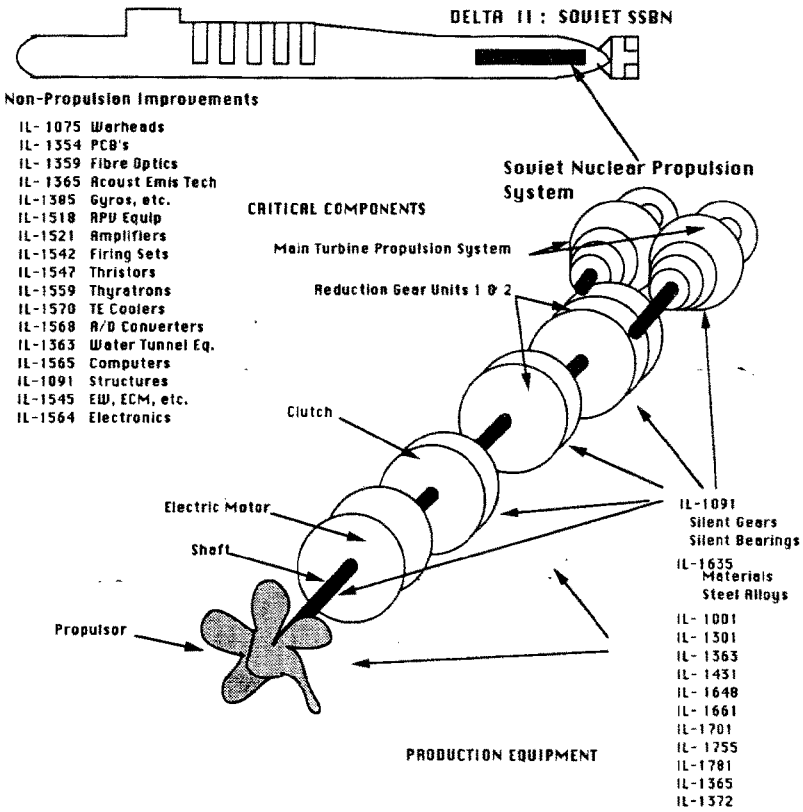
SAMPLING OF POTENTIAL SU-27 IMPROVEMENTS MADE POSSIBLE BY JCS PROPOSED COCOM LIST DELETIONS, OR HOW TO TURN A SU-27 INTO AN ATA/ATF EQUIVALENT



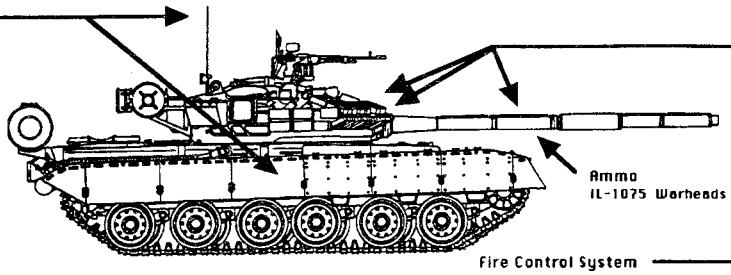
Premise: Few individual technologies constitute a single "Gap Closer" as a typical weapons system represents an array of disparate technologies.

Problem: JCS review proceeds from the assumption that such gap-closers can be identified and isolated on an individual basis. The methodology ignores the cumulative impact of their individual decontrol recommendations as well as the synergistic effect of technology integration upon the performance of larger systems, such as tactical aircraft.

SAMPLING OF POTENTIAL SOVIET SSBN IMPROVEMENTS MADE POSSIBLE BY JCS PROPOSED COCOM LIST DELETIONS AND MODIFICATIONS



SAMPLING OF POTENTIAL SOVIET ARMORED FORCES IMPROVEMENTS MADE POSSIBLE BY JCS PROPOSED COCOM LIST DELETIONS AND MODIFICATIONS, OR HOW TO TURN A T-80 INTO AN M1A2 EQUIVALENT



Fire Control System

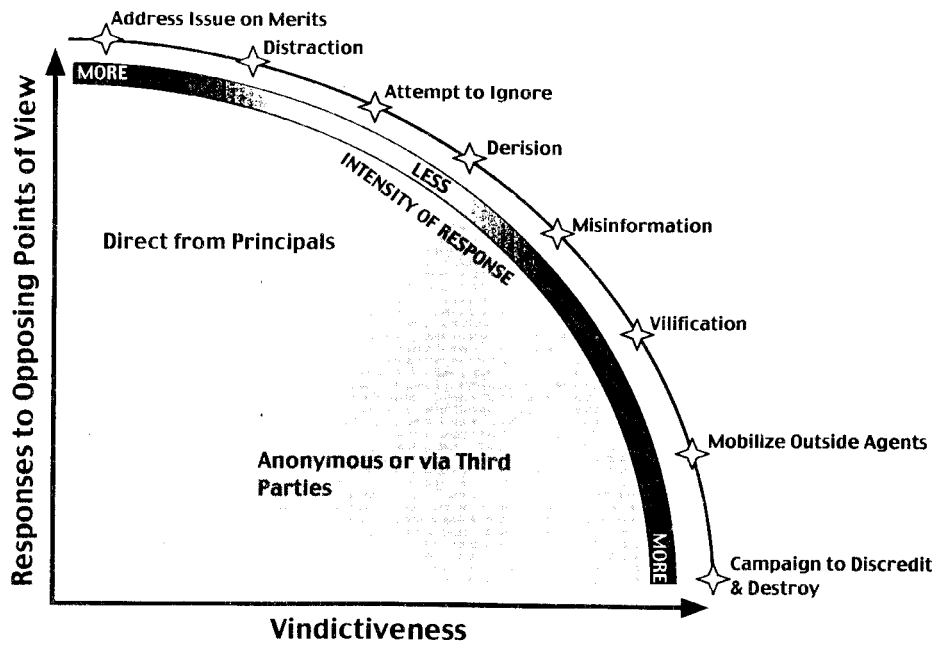
IL-1091 Machine Tools
- Traverse Mechanism
- Elevation Mechanism
- Gyros
- Gimbals
- Mounts
- Gear Drives
- Pinions
- Gunner's Controls
- Commander's Controls
- Stabilization Mechanisms
- Bearings

IL-1565 Computers
IL-1385 Gyros
IL-1635 Steel Alloys
IL-1755 Lubricants
IL-1781 Lubricants
IL-1570 TE Coolers for Sensors
IL-1564 Electronics
IL-1568 A/D Converters
IL-1359 Fibre Optics
IL-1354 Surface Mount PCB's
IL-1518 RPU Equipment
IL-1301 Superalloy Technology
IL-1661 Nickel Based Alloys

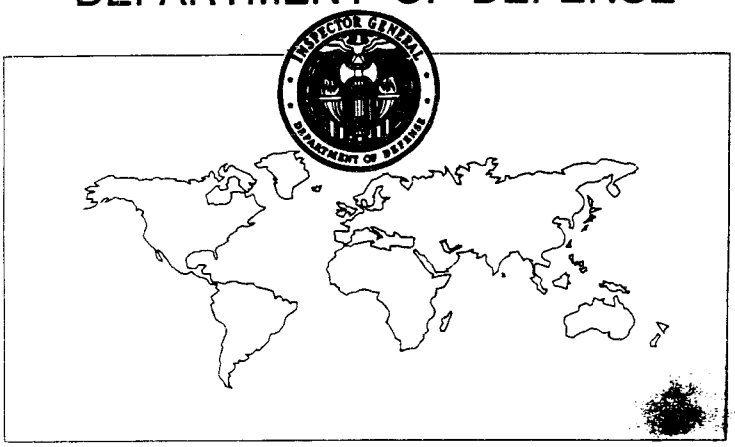
Navigation/Guidance/Communications

IL-1385 Compasses, Gyros, INS & Accelerometers
IL-1521 Amplifiers
IL-1544 Semiconductors
IL-1545 Transistors
IL-1547 Thyristors
IL-1559 Thyratrons
IL-1587 Quartz Crystals
IL-1588 Bubble Memory
IL-1565 Computers

Shooting the Messenger



INSPECTOR GENERAL
DEPARTMENT OF DEFENSE



DEFENSE TECHNOLOGY

SECURITY ADMINISTRATION

INSPECTION REPORT

92-INS-08

employment...for the purpose of improving or injuring the prospects of any particular person for employment." We found, however, that DTSA military officers who separate from their Service are routinely preselected for civilian positions within the DTSA. For example:

Preselecting Military Officers

- The March 13, 1990 "DTSA Personnel Status Report," an internal DTSA document, named a military officer who would soon retire (August 1, 1990). The report listed required action as "(u)pon retirement, employ as a civilian, he will have to compete." The status of the action was listed as "initiate paperwork to hire him as a civilian, but do not give up military billet. On hold until Oct [1990]." The retired officer was subsequently hired by the DTSA on April 8, 1991, as a GM-15, Foreign Affairs Specialist. Thomas Daniel

- The DTSA announced a position for a GM-130-15, Foreign Affairs Specialist, on March 13, 1991. The intention was to "civilianize" a position being vacated by a military officer soon to retire. The announcement closed on March 27, 1991. On March 29, 1991, the Deputy Secretary of Defense announced a hiring freeze that prevented the position from being filled. A "Certificate of Eligibles" (a list of qualified candidates) was never issued by the WHS. The Director, DTSA, sought the assistance of the USD(P) in obtaining an exception to the freeze in a July 8, 1991 memorandum. The Director stated "...[the military officer]..., who has managed the program from the outset, applied for this position. When we were informed that no selection could be made for the position because of the freeze, we applied for an exception to the freeze.... That request was returned without action.... This leaves us with two alternatives--either get an exception to the freeze to allow...[the military officer]...to compete for the civilian position or transfer program management to the Air Force, which has the requisite technical and physical security expertise" [emphasis in original]. The matter is still unresolved.

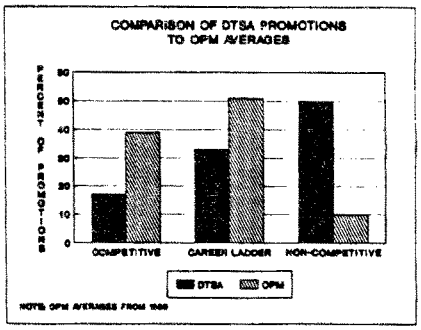
- The Military Assistant to the DUSD(TSP) retired on July 1, 1991. He had previously been selected as a GM-15, Munitions Control Specialist, for the Senior Jim Woody

Assistant position in the Trade Security Policy Directorate. He began his new duties the day he retired. His nominal supervisor, the Director of the Trade Security Policy Directorate, told us that the Senior Assistant position was not tenable as a full-time position. He further related that he had not requested a Senior Assistant, but was told by the Director, DTSA, to find the officer a job. Despite the fact that the officer was occupying an unnecessary position, the Director, DTSA, submitted him for a $2,985 performance award. To do so, the former officer's civil service rating period was extended for 30 days so that his appraisal covered the 90 days required by the OPM.

Under the current Director, DTSA (who arrived on October 23, 1989), 5 of 9 new hires (56 percent) have been military officers assigned to the DTSA who have separated from their Service.

Noncompetitive Promotions

In addition to the preceding merit selection irregularities, we noted the extensive use of noncompetitive promotions during our inspection of the DTSA. Noncompetitive promotions result when duties are added to positions with no known promotion potential. The statistics available indicate that the preponderance of promotions within the DTSA are noncompetitive and far exceed OPM averages. The following chart shows the 1986-1991 DTSA competitive, career ladder, and noncompetitive promotions, as well as the OPM FY 1989 (the last year available) summary data:



OFFICE OF THE UNDER SECRETARY OF DEFENSE

WASHINGTON, D.C. 20301-2000

MEMORANDUM FOR THE RECORD

SUBJECT: INDIA CASE [redacted] 4/19/91

On 2/27/91 I approved with conditions case [redacted] (attached) to the Center for the Development of Advanced Computing (CDAC) in Pune, India. I imposed the following conditions for approval on the case:

> Subject to review by SNEC and State as CADC is deeply involved in development of an indigenous supercomputer. If approved then the following conditions apply: MOU 2B assurances as well as additional government assurances that these commodities will not be used in support of supercomputer R&D activities including software design, computational fluid dynamics, launch vehicle dynamics, ASW related signal processing or computational mathematics. All Software in object code only. No embargoed application software.

These conditions were imposed because CDAC's main purpose in life is the development and production of a "homegrown" Indian supercomputer (See accompanying CDAC annual report). As the policy of the USG is to exact certain safeguards as a condition of exporting supercomputers to various countries, including: limited access, tight security, no reexport, control over remote access, no third country national access, no prohibited weapons development activities, etc., it appears that providing Indian supercomputer R&D facilities with equipment to facilitate the development of their own supercomputer which will not be subject to any safeguards is a fundamental non-sequitur. As a result, I requested special assurances that the [redacted] Workstations requested for export will not be used for such purposes. Absent such assurances the license should be denied.

The other software items being restricted relate to missile, hypersonics, anti-submarine warfare and other advanced military developments which not only appear to go beyond the scope of the US/India relationship but also involve technologies cited by the Secretary of Defense, for several years in his Critical Technologies Plan, as among the "crown-jewels" of present and future U.S. military production capabilities.

On 4/18/91 I spoke with [redacted] the India Desk Officer in the State Department's Bureau of Near East Affairs. He strongly disagreed with the DoD conditions in spite of my pointing out what I described as a fundamental inconsistency in regard to India. He stated that obtaining such conditions would entail new negotiations and nowhere was there sentiment for such an undertaking. I reiterated the fundamental concerns over restricting the sale of a commodity (in this case supercomputers)

versus assisting India to produce their own version of the commodity to which no conditions would apply regarding resale/reexport or end-use. He responded by saying "I don't want to address that and I will send it back to Commerce for escalation to the ACEP." With that the conversation was ended.

Peter M. Leitner
Foreign Affairs Specialist

Attachments: 1. 1988 - 1990 CDAC Activity Report
2. Case [redacted]

April 1, 1992

MEMORANDUM FOR THE RECORD

SUBJECT: Ethical problems with Case # [redacted] --[redacted]

This memo is to excuse myself from any further actions regarding the above cited case. My reasons are based upon severe ethical problems in assisting the approval, with what I am convinced are ineffective and misleading conditions, of an inherently strategic machine tool to the Peoples Republic of China.

Considerable research has pointed to the fact that this machine tool is a key element in the production of cruise missile engines, Apache and Blackhawk helicopter engines and in a variety of other military gas turbine engines such as the M1A1 and various warplanes. In fact, the majority of these machine tools have been sold to US aerospace related companies. Some have been delivered to DoE facilities for Black Programs as well.

I am deeply troubled by the fact that unsubstantiated claims made by [redacted] that they will go out of business if this sale is rejected have not been investigated. In any event, the contributions Chinese ownership of this machine may have in helping them "close the gap" in critical subassembly and component manufacture for such power projection areas as cruise missiles, manned bombers and helicopters has been relegated to minor stature vis-a-vis perceived political pressure for approval as manifested in one phone call from a Senator. In addition, the fact that this case will serve as a precedent for approvals with placebo-like conditions for similar classes of strategic machine tools has likewise been brushed off.

As it is my understanding that my role in the export licensing process is to provide a strategic assessment of the appropriateness of a particular export and recommend a particular course of action it is inappropriate to distort such analysis with economic, financial or balance of trade considerations. Other fora exist to provide that overlay within the decision-making system.

I am hereby excusing myself from further action on this case including the authoring of what have been described as "fig-leaf" conditions to justify an approval. This memo is being put in written form per the request of the Branch Chief, Dual Use Licensing.

Peter M. Leitner
Foreign Affairs Specialist

June 4, 1992

MEMORANDUM FOR PETER SULLIVAN
THROUGH: P. Carellas

SUBJECT: CASE [redacted] -- Gas Turbine Engines to PRC Navy

DoD appears about to embark upon a new, high order, level of support for the military of a proscribed nation -- the PRC. The issue facing OSD and the Services is whether to provide direct support which would result in the enhancement of the military power projection capabilities of the PRC through the export of sensitive dual-use technologies, in this case gas turbine engine production data via Chinese test programs.

In addition, the USG appears to be in violation of CoCom regulations for the issuance of export licenses for technical data transfers to the PRC for the six years preceding the present application.

Chuck Craig attempted to point this out to you on Tuesday in our meeting concerning the present case. If this case goes to CoCom it is highly likely that various delegations will ask reasonable questions concerning the proposed test regime. Chief among these questions will be: Why were the technical data licenses not forwarded to CoCom as required under CoCom procedures? The Allies will be quick to point out that the technical data packages embodied in the earlier U.S. issued licenses were indeed subject to CoCom controls. They will conclude that the licenses were issued in violation of CoCom agreements and serve to unfairly advantage a U.S. company.

The Allies would be correct in coming to such conclusions based upon the CoCom regs in effect at the time of the licences being issued.

Please note that the type of technology licensed appears to be precisely that embargoed by CoCom as described in the attachments to this memo. In attempting to answer these questions the United States will be in a position similar to France during the Forrest-Line scandle. As you will recall, those machine tools were licensed for export to China in violation of CoCom regs and French Law and resulted in the arrest of several people. It was the French, in retaliation for pressure from the United States over this scandal, who identified the Ingersol 11-axis tape laying machine exported to the USSR under a US license without going to CoCom.

In addition, we now are seeing the French attempting to use the ill-advised US approval of the [redacted] case as a hostage to their request to export production technology for 5-axis machine tools to the PRC. DoD needs to step back from its current rush to

be everyone's friend and consider the undermining and erosive nature of decisions to approve cases such as the current United Technologies/ PLA Navy arrangement.

Attached please find the pertinent regulations governing the exportability of technical data which led to the current license.

Peter M. Leitner
DTSA

Investor's
Business Daily
CHOOSE TO SUCCEED

June 3, 1999 | Los Angeles, California Volume 16, No. 39 ©1999 | www.investors.com | $1.00

NATIONAL ISSUE

LOS ALAMOS STORING EXPORT DATA

CDs Of Navy Weapons Blueprints May Be At Risk

By Paul Sperry, John Berlau and Scott Wheeler
Investor's Business Daily

In the mid-1990s, an obscure shop within Los Alamos National Laboratory in New Mexico contracted with the U.S. Navy, and possibly the U.S. Air Force, to transfer blueprints and other technical data for arms-related exports onto compact disks for computers, *Investor's Business Daily* has learned.

An IBD exclusive

The shop, which is run by Steve K. Hue, was set up in 1995.

It was from Los Alamos that China in recent years stole much of America's most vital nuclear-weapons secrets.

Pentagon officials fear the lab's CD-ROM operation exposes *conventional* U.S. forces to wholesale Chinese espionage, which would pose a more immediate threat to national security.

A former Los Alamos computer scientist is suspected of turning over to China the design data to the W-88 warhead, the most sophisticated nuclear weapon in the U.S. arsenal. The breach, which took place in the 1980s, was first discovered in 1995.

The Chinese scientist, who was fired in March, also transferred virtually the entire history of U.S. nuclear weapons testing and development to an unsecured computer network in the mid-1990s.

Around that period, Los Alamos officials approached the export controls offices of the Air Force and Navy and made a bid to store on CD-ROM the thousands of license applications they get from defense contractors each year.

The applications include hard copies of blueprints and technical specs and manuals for export equipment and technology used in fighter jets and battleships, among other arms.

If leaked to China, the data "could be more devastating than the nuclear stuff, which is less likely to be used," a senior Pentagon official said.

China, which lacks a blue-water navy and long-range air power, is eager to grab such technology to help it project power in Asia, defense experts agree.

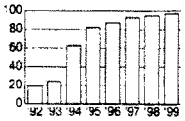
The Navy and Air Force were looking for better ways to store and access the documents as part of Vice President Al Gore's "Reinventing Government" goal. Then-Defense Secretary William Perry also encouraged "outsourcing."

And Los Alamos, with its state-of-the-art computers and reputation for vault-like secrecy at the time, was a

Continued on Page A24

Welcome Mat

The number of Chinese nationals employed by Los Alamos National Lab soared during the Clinton administration . . .



. . . and China leads all nations in representation at the lab

NATIONAL ISSUE: Los Alamos Storing Export Data

Continued from Page A1

compelling option.

What's more, its bids came in at an "incredibly low price — lower than you can get commercially" for digitizing such a large volume of paper records, said the Pentagon official, who wished to go unnamed.

But at the time, the Energy Department, which owns Los Alamos, did not tell the Pentagon — nor the Commerce or State Departments, which also handle licensing of sensitive exports — about the Chinese spying it uncovered at Los Alamos.

Officials with the lab and both military branches were reluctant to discuss details of the contracts. While they confirm the existence of the Navy contract, they claim they aren't sure the Air Force contract was ever inked.

The Pentagon official says that in fact a deal was struck in 1995. But the Air Force contract was pulled last year, he says.

The Navy contract also ended — within "the last few months," said Los Alamos official Dave Montoya, who leads the group that handled the Navy contract.

News of Chinese spying at the lab broke in March.

Montoya added that the lab worker heading the project "is now retired." Hue, a 24-year lab veteran, said "it's about time" he retired.

Hue also told *IBD* that the Navy contract he worked on — which involved his scanning arms-related export data and burning their images onto CDs — "has been a long dead project."

But a manager in Hue's group, Jim McDonald, says the Navy hasn't killed the project. It's merely transferring its contract to a private firm in Washington.

And Hue is following the project to Washington, the manager says.

In other words, Hue isn't really retiring. Nor is the project "dead."

The data Hue is handling are so classified that the Navy locks the CD copies it gets from Hue in a safe. Masters are kept at Los Alamos, the Pentagon source says.

Lab officials would not say where the masters are stored or how they're secured — or how they'll be warehoused once Hue moves his shop to Washington.

Hue says he has security clearance to handle classified documents.

Those documents include specs and even blueprints to the most advanced air and sea weapons systems in the world,— things like waving receivers that help fighter pilots detect when they're being tracked by enemy radar, the Pentagon source says.

They also reveal information about:

- Optical and infrared seekers and sensors for missiles.
- Anti-submarine detection equipment.
- "Black boxes," or electronic components systems, which help mask the presence of a plane.
- Night-vision equipment.
- Even so-called "black programs," such as the stealth fighter and bomber, that require special security clearance and secret funding.

The technical specs Hue has scanned include exports OK'd for allies — as well as exports denied.

"Even things we've said 'no' to the British on are in those CD-ROMs," the source said.

More than two years of Air Force data and more than four years of Navy data are stored on the CDs, he says.

"They (Navy and Air Force) were shipping data to him (Hue) by the box load," he said.

The source figures that Hue stored for the Air Force between 15,000 and 18,000 cases involving license applications for exports with items that show up on State's munitions list of technologies that have dual — civilian or military — use. The volume of Navy cases is "twice that," he said.

"There's a lot more detail (in the cases) than m anything we lost that's in the Cox report," the Pentagon official said.

The 872-page declassified House report from a panel on Chinese spying led by Rep. Chris Cox, R-Calif., found that China has stolen information on every nuclear missile warhead deployed in the U.S. arsenal, which is under the guard of Energy's labs.

When a defense contractor applies for an export license involving munitions, it must first go through State, which requires it to attach what's called a "technology data package." State assigns it a case number and processes the application.

If State deems the export too sensitive to OK, it forwards the package to the Pentagon's Defense Threat Reduction Agency, which reviews more than 20,000 export license applications a year.

> "(Stolen conventional-weapons data) could be more devastating (to U.S. national security) than the nuclear stuff, which is much less likely to be used."
>
> — senior Pentagon official

DTRA, in turn, consults with Air Force and Navy, as well as Army, to make sure the nation's not giving away too much of its defense secrets. Paperwork is shared.

Air Force's International Affairs and Navy's International Programs Office review the materials and give DTRA a recommendation. They file their copies of the materials.

From there, at least Navy materials (which include aviation technology) are often scanned onto CDs.

A typical CD holds 680 million bytes of memory. That translates into thousands of pages of documents.

"One CD can hold a year's worth of data," the Pentagon source said.

> "There are a number of individuals connected with China-related espionage still employed at Department of Energy labs."
>
> — senior congressional aide

Navy IPO official Stan Hicks says that CDs, by compressing reams of hard copies, will make sending data to agencies and branches easier.

The Pentagon official agrees, but adds they're also easier to steal — especially from a facility like Los Alamos that's fraught with security problems.

"You can't sneak out a bunch of boxes of (copied) documents," he said. "But you can if you fit them on a handful of CDs."

Also, unlike computer diskettes which contain metal, CDs are made entirely of plastic and can thus avoid metal detectors, he notes.

What's more, the "classified" stamp that Los Alamos puts on the plastic CDs is easily removed. "You can lick your finger and just wipe it off," he said.

But McDonald, the section leader in Hue's group, said: "CDs are a really good medium for classified stuff because you can put a lot of (digital) protections on it."

The Pentagon official said he knew about the data storage contract "for a few years." But he didn't think much of it until news broke this year of massive spying at Los Alamos.

Los Alamos' classified archive project with the Navy started around the same time a spy was suspected of stealing data on nuclear weapons technology at the lab.

"(Energy) didn't warn any other agency about the security leaks," the source said. So the Navy and Air Force "walked into a goddamn trap."

The source called Hue's archiving operation an "oddball . . . cockeyed little shop in Los Alamos."

Hue's group, designated CIC-15, is known as Advanced Databases and Information Technology, a unit of the Computing, Information and Communications division. In the lab's organization chart, CIC falls directly under the office of the Associate Director for Nuclear Weapons.

It's "a new group," its official overview states, formed in 1995. CIC-15 hasn't had a group leader in four years. Montoya is the acting group leader. He says the group is undergoing a "reorganization."

The overview also states that CIC-15 seeks out "external-to-the-laboratory" projects. While it seems odd for a group within a government-owned weapons lab to be offering its services to the outside, it's actually not that unusual, Los Alamos spokesman Jim Danneskiold says.

He says 15% of the lab's $1.2 billion budget comes from outside contracts. And most of them are with the Pentagon.

Many of them have come on line in recent years. In a 1996 letter to President Clinton, former Defense Secretary Perry laid out "outsourcing" goals for the department.

In it, he also vowed: "The department will not pursue outsourcing activities that compromise our core war-fighting missions."

Citing Los Alamos leaks, the Pentagon official worries the CD project might have led to such compromises. "We need to do a damage assessment," he said.

But Energy Secretary Bill Richardson asserts the leaks have been fixed.

"I can right now face the American people and say that because of the counterintelligence measures that we have initiated, there (is) no potential serious espionage at our labs," Richardson said last week. "We've corrected the problem."

Yet the lab is still admitting Chinese visitors — though, "as far as I know, there haven't been any (Chinese) visits in a couple of months," Danneskiold said.

Chinese visitors have flooded the lab since 1993. In the fall of that year, the administration halted background checks on foreign guests.

In 1994, the number of Chinese visitors to the two New Mexico labs — Los Alamos and Sandia — more than doubled to 329.

Investigators from Congress recently found at least 13 suspected spies got into the labs without proper CIA or FBI vetting. It's not clear, though, if these visiting scientists stole secrets.

The administration reinstated security checks at the labs in November 1998.

Los Alamos Director John Browne still defends the foreign visitors program, arguing that scientific interaction among countries is too important to give up.

During the Clinton administration, the number of Chinese nationals working at Los Alamos has catapulted 411%, according to an internal lab document obtained by *IBD*.

There were 97 native Chinese workers as of April, up from 19 in 1992. It's also up from 82 in 1995, even though Chinese spying at the lab was discovered that year.

China is on Energy's list of "sensitive countries," along with other countries such as Iraq, North Korea, Pakistan and Syria. Yet none of these countries have any workers at the lab.

And the ranks of the Chinese dwarf those of all other foreign nationals working at the lab, including even those from allied nations.

Foreign nationals from Germany total 49; Canada, 36; Britain, 28; and France, 12. Those from Taiwan — China's arch-rival — total just 12.

Intelligence sources say Chinese spies are still in the labs.

"There are a number of individuals connected with (People's Republic of China)-related espionage still employed at DOE labs," a senior congressional aide said.

WALL STREET JOURNAL
June 10, 1999

The Administration Quashes Truth Tellers on China

By MICHAEL LEDEEN

We hear from President Clinton and his defenders that he is not to be blamed for the Chinese espionage detailed in the Cox committee report, nor for the illegal transfer of missile technology to China by American corporations like Hughes and Loral, since both the espionage and the technology-transfer policy began years ago, in the Reagan era. For the most part, neither the media nor Republicans have challenged this line, Mr. Cox himself being a notable exception. But it is false. President Clinton has done two things that were inconceivable in the Reagan years: He has armed China with our best military technology, and has silenced anyone inside the executive branch who has dared challenge this policy.

During the Reagan years, the U.S. crafted an international system to prevent dangerous technology from going to dangerous countries. This required enormous input from professional civil servants, particularly in the military, to evaluate the impact of high-tech sales to actual and potential enemies. It would have been unthinkable for those experts to have been silenced or coerced into lying about matters that directly affected national security. Yet this has happened repeatedly during the Clinton years, as some recently uncovered documents show.

Shortly before Chinese President Jiang Zemin's arrival in Washington in the fall of 1997, the White House was pushing the State, Defense and Energy departments to support a presidential certification of China as a nuclear nonproliferator and to sign off on the creation of an "information exchange and technical cooperative reciprocal arrangement" on ostensibly civilian nuclear technology. This arrangement would give the Chinese easy access to American civil reactor sites, provide them with detailed information on how the U.S. handles fissionable materials, and give them access to operational data on U.S. nuclear sites.

Despite pressure from the White House, Jonathan Fox, an attorney on the arms-control staff of the Defense Special Weapons Agency, wrote a memo stating with certainty that China was a nuclear proliferator and that the proposed arrangement was "a technology transfer agreement swaddled in the comforting yet misleading terminology of a confidence-building measure." Mr. Fox's memo argued against the agreement on these grounds:

- It "presents real and substantial risk to the common defense and security of both the United States and allied countries."
- It "can result in a significant increase of the risk of nuclear weapons technology proliferation."
- "The environment surrounding these exchange measures cannot guarantee timely warning of willful diversion of otherwise confidential information to non-nuclear states for nuclear weapons development."
- There was no guarantee that the nuclear information would be limited to nonmilitary applications in China itself.

Mr. Fox noted that the Chinese chafed at their inferiority to the West and "now seek to redress that balance through industrial, academic and military espionage. China routinely, both overtly and covertly, subverts national and multilateral trade controls on militarily critical items." (Those who have been lured into the deceptive debate over when we knew about Chinese espionage should note that civil servants like Mr. Fox, well below the pay grade of National Security Adviser Samuel Berger and Secretary of State Madeleine Albright, were well aware of the general phenomenon).

Military experts who argued against high-tech exports to China later discovered that their recommendations had been altered in the Pentagon's computer data base.

On Oct. 24, 1997, Mr. Fox was called out of an interagency meeting to receive an urgent telephone call. According to three people to whom he gave a contemporaneous account of the phone conversation, he was given an ultimatum from superiors in the Office of Non-Proliferation Policy in the Department of Defense: either revise the memo and recommend in favor of the agreement, or look elsewhere for employment. (Mr. Fox himself declined to comment on the matter.)

Within an hour, all the critical language had been deleted, and the memo now simply concluded that the agreement "is not inimical to the common defense or the security of the United States." Worried that his earlier draft might fall into unfriendly hands, Mr. Fox's superiors insisted that somebody else sign the new memo.

The arrangement was in place in time for the summit with the Chinese ruler, who was no doubt quite satisfied that his American friends had given him a good-conduct certificate, even though he, Mr. Clinton and the entire American national-security team knew full well that China was spreading militarily useful nuclear technology to such nations as Iran and Pakistan. Indeed, it was precisely this knowledge, and the fear that somebody in the media or Congress might enunciate it at an embarrassing moment, that drove the administration to silence potential truth-tellers.

Mr. Fox is not the only weapons expert in the government to have been instructed to lie or remain silent about the true consequences of sending military technology to China. Notra Trulock and his colleagues were told by their superiors at the Department of Energy that they should stop annoying people with accounts of Chinese espionage at Los Alamos. Similarly, professionals in the Pentagon such as Michael Maxwell and Peter Leitner were told to keep quiet about the approval of high-tech licenses that would strengthen Chinese military power. Both of them spoke out; other remain silent.

But even when the professionals stick by their principles, their superiors have chosen to substitute facts with politically expedient disinformation. On at least two occasions, military experts who argued against high-tech exports to China later discovered that their recommendations had been altered in the Pentagon's computerized data base.

Had President Reagan's appointees attempted such heavy-handed censorship, the Democrats in Congress, constantly on the lookout for cooperative whistle-blowers, would have cried bloody murder. Yet despite being well aware of the level of internal censorship, Republican leaders from Rep. Dick Armey to Sen. Fred Thom

Administration

THE PENTAGON'S ALPHABET WARFARE

BY SYDNEY J. FREEDBERG JR.

RICHARD A. BLOOM

JOHN HAMRE: "DTSA is spending 95 percent of its time looking at things that . . . are irrelevant."

At first glance, the latest reform project at the Department of Defense resembles some unpronounceable game of Scrabble: Offices known arcanely as DSWA, OSIA, and DTSA will merge into the equally opaque DTRA. But as House and Senate conferees reconvene this week to wrangle out the final Defense appropriations bill, the members must strive to decipher this alphabet soup—and the 15 years of bureaucratic battles that made it.

At stake, said Deputy Secretary of Defense John J. Hamre, is how the nation meets "the largest security challenge we face in the next decade: the spread of chemical, biological, and nuclear technologies"—weapons sought by enemies, from North Korea to Iraq, and capable of killing thousands. The powerful Hamre is personally pushing the reform as a much-needed—and, say his supporters, long-overdue—rationalization of the Pentagon's anti-proliferation efforts into a single, coherent organization, the Defense Threat Reduction Agency (DTRA).

Against this plan rails a single civil servant of what is normally the most anonymous kind. Yet Peter Leitner, a reviewer of export licenses at the Defense Technology Security Administration (DTSA), has testified repeatedly on Capitol Hill, blasting his own superiors. His charge: that Hamre's plan will fatally compromise controls on the export of dangerous technologies.

"DOD, over the last six years," said Leitner, "has been severely weakened" in its ability to keep American technology out of unfriendly hands. By folding his agency, DTSA, into another, Leitner said, the planned reorganization would "put a stake through the heart of . . . whatever's left."

A crucial problem, said Leitner, is the proposed chain of command. Currently, DTSA's export-control functions report to the undersecretary of defense for policy. As part of the new, composite DTRA, however, those functions would report to the undersecretary for acquisition and technology. "Acquisition is involved in exports," Leitner warned, because it seeks to keep the American defense industry profitable, in part through foreign sales of the very type that DTSA regulates. "You have an inherent conflict there."

DTSA's first director, Stephen D. Bryen, suspects a deliberate Clinton administration plan: "They saw an opportunity to disembowel it," he said of the agency he founded in 1983-85. "Take it out of Policy, and it won't be accountable."

Leitner, Bryen, and other export-control hawks have found a willing audience among congressional Republicans, already suspicious that the administration subordinates national security to free trade. "The administration seems to have a basic rule: In case of a problem, tilt towards [granting] the export license," said Sen. Jon L. Kyl, R-Ariz. "That's flawed policy. It plays right into the hands of terrorist organizations, it plays right into the hands of rogue states that wish us ill."

Kyl introduced an amendment to the Defense appropriations bill that would have mandated DTSA's continued independence. He withdrew it, for procedural reasons, but he received assurances that the conference would look at the issue. Powerful senators, such as Strom Thurmond, R-S.C., John W. Warner, R-Va., and Fred D. Thompson, R-Tenn., have declared their support.

The House has already passed language that would keep export controls under the "overall supervision" of the undersecretary for policy. A House National Security Committee spokesperson admitted, however, that the vague wording "does not specifically preclude DTSA from being reorganized" into a new agency under Acquisition.

Ironically, Deputy Secretary Hamre stressed that his reform plan always provided that Policy would retain overall supervi-

sion of export controls. "The formal process of security review and the interagency process still [are] going to go through Policy," Hamre said, even if the export-control office belongs to Acquisition for administrative purposes. All of this fervor on the Hill, he suggested, results from a misunderstanding of his intent: "We never intended to move that [oversight]. It's been my failing, for not properly explaining it, but once I sit down and talk to people about it . . . we have support."

Either way, agreed Jay Davis, the director-designate of the new DTRA, "the criteria against which the [export-control] activities are set belong to Policy." As head of a composite agency, he explained, he will be responsible to multiple bosses. Policy among them. Acquisition, however, "has the most-magic control, which is the money. . . . No matter what the wiring diagram says, the budget for this agency goes through [Acquisition]."

Such fiscal realities give thoughtful observers pause.

So do organizational realities: By folding DTSA into the new DTRA, the reorganization would introduce another layer of bureaucracy between the civil servants actually reviewing export licenses at DTSA and the Pentagon's top decision makers. A director of DTSA from the Bush administration, William N. Rudman, said that slogging up a single step of the hierarchy was hard enough: "You have to get somebody who has other things on his plate, and to whom your stuff is a nuisance and technically incomprehensible, and you have to get him energized to deal with his peers."

Rudman can see no sound reason for the new administrative scheme. His explanation: "Obviously, Clinton would sell his mother for a vote. . . . Strategic considerations mean nothing here, and it's all politics."

The irony of Rudman's charge is that his former subordinate at DTSA, Leitner, has leveled the same charge against him. "During Rudman's tenure," Leitner remembered angrily, "the U.S. government led an effort to eliminate one-third of the items on the COCOM list [of restricted exports]—purely a political exercise."

It is such long-held and bitter memories of past battles that make today's debate so acrimonious. Leitner is the voice of a group of deeply discontented DTSA staffers—a majority within the agency, he claims, and certainly a significant minority. Their grievances go back for years. They long for DTSA's days of greatest influence—under Reagan, when Bryen was director, and export controls were frozen strong by the Cold War. Their standards of security are high: Leitner even admitted "reservations" about the Reagan administration's policy, saying it was too lax toward China.

"These people have objected to every export-control decision the last three administrations have made," fumed William A. Reinsch, undersecretary of commerce for export administration. Commerce, as official advocate for America's exporters, has fought DTSA bitterly since the Reagan days. DTSA has historically retaliated with end runs up to sympathetic conservatives on Capitol Hill—much the way Leitner is doing now. In fact, former Reagan-Bush Commerce officials recalled Leitner in particular as "one of the most outspoken. . . . Leitner used to go up on the Hill and spill his guts."

Nor is civil strife within DTSA a novelty. While Leitner criticized Rudman's post-

PETER LEITNER: Reorganization would "put a stake through the heart" of export controls on dangerous technologies.

Cold War loosening of restrictions, Rudman referred to Leitner—whom he demoted—as "a zealot" and "professionally insane." Before Rudman's 1993 retirement, a 1992 Defense inspector general's report damned DTSA for mismanagement and low morale. Summed up David Silverberg, who covered DTSA at the time for *Defense News*, "This office was in deep shit, way back then."

"We had lost our reason for being," recalled Rudman: the Cold War.

Since then, said Davis, "DTSA and its management haven't changed, but the world's changed around them." They continued to operate under an old paradigm of export control: "Put a fence around the United States, and don't let something out." That approach kept bulky machine tools and mainframe computers out of the hands of a clearly defined adversary in Moscow. But "what does it mean to try to do technology control" in the 1990s, Davis asked, "when everything you need to produce biological weapons, you can legitimately buy . . . out of a scientific catalogue?"

"Too many people in DTSA," said Hamre, "are still holding on to that old model. The goal isn't to process as many license applications as we can. The goal is to try to find out what is truly damaging to America's security." He said, "DTSA is spending 95 percent of its time looking at things that, I personally believe, in many ways, are irrelevant."

Hamre hopes the new agency, DTRA, will create the "intellectual infrastructure" for a new approach, much as the RAND Corp., the California-based think tank, laid the intellectual foundation for Air Force strategy at the dawn of the nuclear age. Only a composite agency, he argues, can achieve that goal.

The new DTRA would combine DTSA's export-control experts with two larger agencies. One, the On-Site Inspection Agency (OSIA), has won a world-class reputation monitoring arms control treaties, in such places as the former Soviet Union and the former Yugoslavia. The other, the Defense Special Weapons Agency (DSWA), is the direct organizational descendant of the Manhattan Project. DSWA studies not only the effects of nuclear, biological, and chemical weapons, but also new means of safely attacking their silos and sites of manufacture. DSWA also administers the Cooperative Threat Reduction Program, which helps former Soviet states dismantle their aging and unwanted nuclear arsenals.

These two agencies, Hamre and Davis argue, can offer DTSA a new wealth of knowledge—gained both in the laboratory and in the field—about the truly dangerous technologies. DTSA can then apply that knowledge to export controls. "If you don't bring DTSA into [DTRA]," said Hamre, "we would have to create those capabilities in the new agency anyway, because the new agency is going to be about controlling the spread of technologies."

What would this brave new paradigm look like? Instead of simply enforcing export-control rules, said Davis, "you put in place an information system that says, 'Here's a class of technologies where the 'flow' looks funny.'" A veteran of the second inspection team into Iraq after the 1991 Gulf War, Davis concluded that Saddam Hussein's nuclear, biological, and chemical weapons programs bypassed old-style controls by purchasing individually innocuous items from diverse sources. Only an analysis of the overall "flow" of materials into the country, he argues, could detect such a buildup.

DSWA and OSIA form "the piece of my agency I know the least about," Davis admits. And Hamre acknowledges, "We don't have our act together yet, because we're still thinking our way through it."

If they want to satisfy skeptics in Congress, they had better think fast. ■

20/20
Lost In Space

Did U.S. Companies Share Technology With China?

Wednesday, December 2, 1998
(This is an unedited, uncorrected transcript.)

DIANE SAWYER, ABCNEWS Good evening, and welcome to 20/20 Wednesday. Tonight, we have a story about how a top US defense contractor may have given away secrets of American rocket technology and at the expense of American national security.

SAM DONALDSON, ABCNEWS Giving the secrets away to China is the charge, Diane, and China this month is expected to test a nuclear missile with enough range to strike the United States. And remember, the Chinese supply weapons to many other countries far more hostile to the US Chief correspondent Chris Wallace joins us now with an exclusive report. Chris?

CHRIS WALLACE, ABCNEWS Sam, tonight, you're going to meet a man named Al Coates, who was the government's top cop to protect US secrets during American satellite launches in China. And Coates says some American aerospace companies released sensitive information which helped the Chinese. Now, the companies deny giving China technology secrets. But independent military experts say when someone like Al Coates makes these charges, it's significant. (VO) February 1996. An American satellite is launched on a Chinese rocket. Just after lift—off, the rocket veers out of control. Seconds later, it explodes, and the $126 million satellite onboard is destroyed. But what's most notable about the accident is that, afterwards, Chinese rockets stopped exploding. Tonight, you'll hear a story you've never heard before—how US aerospace companies may have helped China build better rockets at the expense of America's national security. (on camera) As a routine matter, are American companies giving sensitive information to the

Chinese?

AL COATES I believe they are.

CHRIS WALLACE (VO) It was Al Coates's job to protect American technology. As a senior monitor of overseas launches, Coates has been warning the government for years about what American companies have been doing in China. Last month, frustrated by the lack of response, Lieutenant Colonel Coates quit, after 29 years in the Air Force. Tonight, he's going public about the aerospace industry for the first time.

AL COATES They want to get the job done. They don't consider it helping the Chinese. They consider it getting their payload and getting their job accomplished.

CHRIS WALLACE (on camera) What has the effect of all this been on US national security?

AL COATES They have a better capability at striking us.

CHRIS WALLACE You mean we're less safe?

AL COATES We're less safe.

CHRIS WALLACE How seriously do you take Al Coates?

SEN FRED THOMPSON, (R) TENNESSEE I take it very seriously. This is very important, troubling new information.

CHRIS WALLACE Republican senator Fred Thompson heads a Senate committee that's been investigating US satellite companies. He says what Coates saw firsthand provides important new leads.

FRED THOMPSON We used to have a system whereby national security was paramount in our considerations.

CHRIS WALLACE (on camera) If national security used to be paramount, what's paramount now?

FRED THOMPSON Commercial interests.

CHRIS WALLACE Profits?

FRED THOMPSON Yes.

CHRIS WALLACE Making a buck?

FRED THOMPSON Yes.

CHRIS WALLACE At the expense of US national security?

FRED THOMPSON I think so.

LAUNCH CONTROLLER Challenger, go with throttle up.

CHRIS WALLACE (VO) It all started back in 1986, when the Space Shuttle Challenger blew up, and American companies began looking for faster, cheaper ways to launch their satellites. Many went to China, where the price of a launch was half what it was in the US But the danger was, in doing business with the Chinese, they would gain access to American secrets. That's why the US government sends monitors like Al Coates to oversee every mission.

AL COATES You're kind of the eyes and ears of the security aspect of it. You turn out to be the supercop.

CHRIS WALLACE (VO) As the supercop on the beat, Coates kept watch over Hughes Electronics, the corporation that paved the way into China. Since 1990, he monitored three Hughes launches there. And he says problems could begin on the plane ride over from the US, such as the time a Hughes scientist was looking at designs of a satellite fuel tank.

AL COATES I asked him what he was using the data for and why he had it, and he said, "Well, it's just my reference material." I informed him, you know, it's illegal to export that data out of the United States. And he had two choices—one, to hand me the document or eat it.

CHRIS WALLACE (VO) Once they got to China, American companies were supposed to protect their satellites. This summer, former Hughes chairman Michael Armstrong (ph) assured Congress the Chinese get no chance to steal technology.

MICHAEL ARMSTRONG, FORMER HUGHES CHAIRMAN It's under surveillance. It goes into a building that is under lock. It has television cameras on it 24 hours a day, seven days a week.

CHRIS WALLACE (VO) But that's not how Al Coates remembers it. He was so worried about Hughes security at this facility in Xichang (ph), China, he decided to conduct his own test to see if he could sneak by the guards and cameras watching the company's satellite.

AL COATES I went in and told them to lock me outside of the building. I went to a door that had a very bad lock and seal and walked inside, walked around the edges of the camera, tapped the security guy on the shoulder and said, "Call your manager. I just broke into your building."

CHRIS WALLACE (VO) It wasn't just physical security. Coates says at almost every meeting with the Chinese, Hughes personnel would start discussing technical information that was supposed to be off limits.

AL COATES Several times it did occur where you had to physically stop the meeting.

CHRIS WALLACE (on camera) Literally, you mean?

AL COATES And take them outside.

CHRIS WALLACE And say?

AL COATES "You've gone too far. I mean, I've already told you about this. Why are you getting into this level of detail?"

CHRIS WALLACE (VO) And though Coates says he never saw Hughes personnel hand over unauthorized material, he says security lapses kept happening. In this area, Coates reported finding sensitive papers left out in the open. And he cited Hughes for sending information across unsecured phone lines, where the Chinese could intercept it.

AL COATES They were serious infractions. Anytime you have the unauthorized release of technical data, it's serious.

PETER LEITNER (PH), PENTAGON OFFICIAL The Chinese intelligence services have penetrated almost every aspect of joint ventures and other things that—business operations in China.

CHRIS WALLACE (VO) Peter Leitner, a current pentagon official who screens what information US companies are allowed to take overseas, says maintaining security in China is especially tough.

CHRIS WALLACE (VO) But Al Coates has no doubts the Chinese benefited from their partnership with US companies. He watched Hughes personnel work closely with the Chinese and says their top priority was a successful launch, with hundreds of millions of dollars at stake.

AL COATES I would call it the end justified the means.

CHRIS WALLACE (on camera) Meaning?

AL COATES Meaning that a successful launch that cost as little money as possible, you have to take certain risks, and some of those risks may include releasing data that you shouldn't.

CHRIS WALLACE Did Hughes put American national security at risk?

AL COATES I believe they did. And I think they put them at risk for profit.

CHRIS WALLACE It's a pretty tough thing to say about an American corporation?

AL COATES But if you accept the mentality that you're doing it strictly for commercial nature of launching communication satellites, then I guess you could have a clear conscience.

CHRIS WALLACE Al Coates wasn't the only one raising red flags about Hughes. 20/20 has talked to other government monitors and to private guards on Hughes projects who tell us they, too, reported security problems. And it wasn't just Hughes. Other satellite companies were also written up. So where was the US government during all this? What was done to tighten security? To answer that, you have to understand what was happening back in Washington.

PRES BILL CLINTON I, William Jefferson Clinton ...

CHRIS WALLACE (VO) President Clinton came into office, promising to stop satellite exports, which started under George Bush, to punish China for selling missiles to countries like Iran. But the satellite industry fought back. In this letter, Michael Armstrong, then head of Hughes, reminded the President of his backing. "You asked me to support your economic package. I did." And there was this blunt warning. "This will be public and political shortly."

FRED THOMPSON I think it was inappropriate for the chairman of a domestic company to really put that kind of pressure to make this all—out

effort to get sanctions lifted on a country that's distributing weapons of mass destruction all over the world.

CHRIS WALLACE (VO) In addition to pressure from Armstrong, other aerospace executives gave big campaign contributions to the Democrats. Over time, the White House made it easier than ever for satellite companies to do business in China. And guess who the President put in charge of his export advisory council? Hughes' Michael Armstrong.

MICHAEL ARMSTRONG This is not about us trying to in any way jeopardize or put at risk national security. This is about a commercial product.

CHRIS WALLACE (VO) Armstrong, who now runs AT&T, declined to be interviewed. Administration officials also would not talk to 20/20 because of an ABC labor dispute. But in June, Commerce Undersecretary William Reinsch told Nightline current controls are working.

WILLIAM REINSCH, UNDERSECRETARY OF COMMERCE I don't have any doubt in my mind that the procedures that we have in place to protect these things are clear and strict and very aggressive.

CHRIS WALLACE (VO) But Al Coates disagrees. Throughout the '90s, he was sending infraction reports back to Washington, reports made public here for the first time.

AL COATES Unauthorized release of technical data. Failure to comply with agreements. Failure to control access. Meeting quickly gets out of control.

CHRIS WALLACE (VO) Coates says he got no response.

AL COATES I'm telling them what's going on, please respond back to me. Nothing ever came back.

CHRIS WALLACE Peter Leitner, who works in the Pentagon office that handled Coates's reports, says concerns about US companies are not taken seriously.

PETER LEITNER There's an air of resignation to the whole thing that just pervades the organization.

CHRIS WALLACE (on camera) That's the message that they have gotten from the administration? Business has won, don't make waves?

PETER LEITNER Time and time again.

CHRIS WALLACE (VO) So Al Coates finally decided to get out. Now, this technology supercop spends his days at home in Florida, reviewing what tried to say in his reports and still wondering why no one seemed to be listening. (on camera) How tough was this for you?

AL COATES Very. It was to the point that where, when your blood pressure is 158 over 106, it's time to do something different before you explode.

FRED THOMPSON Very sad, very disturbing. It's our responsibility to get to the bottom of a system that would cause that. I think that they've done a very bad job with regard to protecting technology that I think may some day come back to haunt us.

CHRIS WALLACE Al Coates has met with investigators from the Justice Department and Congress. Much of what they have learned about US satellite companies remains classified. But a special House committee is planning to hold hearings in two weeks about what the Chinese have gained from American technology. Sam?

SAM DONALDSON Thank you, Chris.

Mr. BURTON. Mr. Maloof.

Mr. MALOOF. Thank you.

Mr. Chairman, members of the committee, I am appearing today in response to a subpoena from the committee. My name is F. Michael Maloof. I am Chief of the Technology Security Operations Division in the Technology Security Directorate of the Defense Threat Reduction Agency in the Department of Defense.

You asked that I address the administration's effort to curb the flow of dual-use technology to China and efforts to safeguard United States facilities. You also asked for my testimony on intimidation or retaliation against government employees who have been involved in these policy areas and have expressed either reservation or opposition to administration policies. I am not in a position to discuss the administration's effort to safeguard U.S. facilities. However, I can address the issues of dual-use technology flows to China and intimidation.

By way of brief background, Mr. Chairman, I have been with the Department of Defense since 1982. I have been a member of the senior management in the Technology Security Directorate since the creation of the Defense Threat Reduction Agency last year. Before that, I had been Director, since May 1985, of Technology Security Operations in the Defense Technology Security Administration when it was in the Office of the Secretary of Defense.

The duties of my staff are to work with other agencies to monitor and to act as a catalyst to halt the diversion of sensitive technology to prescribed destinations, their weapons of mass destruction, and strategic conventional weapons development programs.

From the data collected and detailed analysis conducted relating to diversion activity, my staff determines what technologies are being targeted, and by whom, and then identifies and develops policy issues and appropriate responses.

In this connection, my office also works closely with the intelligence community and enforcement agencies. This was the case during the cold war during which we were responsible for halting diversions of sensitive technologies to COCOM proscribed countries of the former Soviet Union and Warsaw Pact, as well as China.

One of our major cases during that period was the highly publicized Toshiba case in which the former Soviet Union illegally acquired militarily sensitive embargoed technology used in manufacturing specially skewed propellers to quiet submarines and thereby prevent their detection. Our efforts not only included the detection of this development, but working with the governments of other COCOM members, we were able to stop further Western assistance to that program.

During Desert Shield and Desert Storm, my staff, along with a Naval intelligence reserve unit assigned to our organization, identified, analyzed, and sought to halt Western technologies on which Iraq depended for its conventional and unconventional weapons development programs. One of those cases involved uncovering the diversion of sensitive night vision devices to Iraq by a Dutch company. The timeliness of this discovery allowed for appropriate countermeasures to be developed and delivered to our troops on the ground prior to the start of Desert Storm. I like to believe that our efforts resulted in saving the lives of many of our troops.

Another case involved the ultimate seizure by United States Customs of a high-temperature furnace which was about to be exported to Iraq. It was to be combined with a number of other uncontrolled furnaces to form a complex for the melting of materials essential for nuclear weapons development.

After the Gulf war, this case served as a basis for expanding export regulations to include a catch-all provision for uncontrolled technologies with application for chemical and biological weapons development and their delivery systems.

The duties of my office also include doing end-user and end-use checks for license applications, whether dual-use or munitions. We make every effort to apply analysis, information from the intelligence community and enforcement data to every application.

With this background, Mr. Chairman, it was natural for me in the early 1990's to raise concerns with my management over what I would call the beginning of wholesale liberalization and decontrol of militarily critical technologies without the benefit of thorough strategic analysis. In my opinion, such sweeping initiatives made virtually irrelevant any analysis as to their strategic consequence. Technologies included such areas as machine tools, high-performance computers, telecommunications, propulsion for power projection, stealth and technologies with application for nuclear uses.

Even though we were undergoing a change in policy, it was apparent that it was designed to allow greater technologies to go to China. This policy change assumed a good end-user/end-use. In China, that was almost impossible to detail since Chinese officials had placed a ban on United States officials from undertaking prelicense and postdelivery shipment checks for sensitive technology exports.

The previous policy, in coordination with the Joint Chiefs of Staff, had identified six special mission areas for which technologies for any one of them would be subject to close scrutiny, regardless of end-user and end-use.

On a number of occasions, I had suggested to my management that a policy review of these special mission areas was necessary to update them and steer away from what I believe was a questionable end-user/end-use approach.

I also expressed concern many times with my front office about not escalating cases on which we initially would recommend denial in interagency appeal sessions. All that the other agencies had to do was wait us out, knowing that our front office would not escalate a serious case to higher level policymakers, and it would be approved.

In addition, I suggested on numerous occasions that we needed to undertake cumulative impact assessments of those technologies which had been approved to determine the strategic impact of those exports.

One of a number of such cases which manifested all of these concerns was the export in 1994 to China of a considerable number of controlled and uncontrolled machine tools from the McDonnell-Douglas facility in Columbus, OH. Dr. Leitner and I recommended denial on this case.

My concern here was over the potential for diversion of some or all of these machine tools, and that is exactly what happened. And

because that case, almost 5 years later, still is under criminal investigation by the Justice Department, I guess it would not be appropriate for me to go into detail of it here.

So it is not surprising that my management would regard me and my views on China as a "Cold war throwback who can't reconcile himself to the inevitable easing of export controls," according to the attached November 27, 1998, Wall Street Journal.

My concerns, however, were and remain over the strategic impact of these exports, not the commercial advantage they would give to certain companies.

I can only presume that it is this perspective which led to an open clash between me and my management over China, beginning in April 1998, over the Hughes-Loral satellite matter.

A New York Times article had detailed how the administration was allowing further space activities with China, despite the fact that a grand jury was meeting concerning the possible illegal release of sensitive technical data to the Chinese.

The technical data involved assisting China in solving certain guidance problems of rockets used to orbit commercial satellites. On the day of the New York Times piece, I received a call from Assistant Secretary of Defense for Public Affairs, Ken Bacon. He said he wanted to know what was behind the story, that the Secretary of Defense had been having breakfast with reporters and was, "blind-sided," by events surrounding this story.

I gave him a brief summary. He called back later for more details and I offered to go to his office to show him what we had on the case as background for the Secretary. He accepted. I also informed my front office.

The initial front office reaction was that no materials were going to be provided to Mr. Bacon. Later, Mr. Bacon called my front office and it was agreed that my boss would take the meeting with Mr. Bacon but I was not to accompany him. My boss said that he had to inform Mr. Bacon of events which were occurring on this case, but he would not elaborate.

I then received a call from an individual in C3I inquiring about the background of the news story. That individual did an electronic mail summary to her boss. My front office obtained a copy. I was called in, asked why I discussed the issue on something which I was not working.

I corrected my bosses and informed them that we had been involved earlier in the process and I had some 10 volumes of binders from the exporters in my office to prove it. The immediate response was disbelief and a further admonition that I had not been working on the issue.

This comment was my first indication that issues relating to satellites were being handled but only by a few people in our entire organization, with my office being bypassed for the most part. Furthermore, my front office accused me of using, "poor judgment," in talking to the individual at C3I. This reaction and its vitriolic tone took me totally by surprise.

I sought to obtain what the New York Times described as a "highly classified Pentagon report," on the satellite issue, but was informed that I could not have access to it since I did not have a "need to know." It is my understanding that the report developed

in cooperation with the Department of State was very critical of certain U.S. satellite exporters.

Indeed, in subsequent cases relating to China, my front office continued to use this mantra of not having "a need to know," as justification to keep me from learning details or the outcome of certain China cases, many of which I had worked on at various stages.

I expressed my dismay to the front office over this kind of treatment. I informed them that in all the years I had worked at the Department of Defense and looked into possible diversions, I never had been told to refrain from looking into a possible export control violation.

Despite the admonition not to speak to anyone about the Hughes-Loral matter, I called our U.S. Customs liaison officer, who confirmed that there had been an ongoing Justice Department investigation of the case for almost a year. Customs was pursuing the investigation on behalf of the Justice Department. He further stated that continued approval of satellite exports was damaging the case. It then became apparent to me that the reason for handling Chinese satellite issues among a very few people and keeping quiet any information concerning an investigation was to ensure that satellite cases continued to be approved, unimpeded.

I can only surmise that my front office recalled previous cases in which we had suspended all license applications of an applicant prior to any indictments or convictions even before the completion of an investigation. There were two other cases, one of which involved the Dutch company diversion of night vision devices to Iraq, a case I referred to earlier. Given the admonition not to speak to anyone outside of DTSA about the Hughes-Loral matter, I did not think such a restriction applied to people within DTSA.

I approached our satellite technical expert who immediately became quite nervous. I specifically wanted to know if we were seeing any of the Presidential waivers and what technologies they may have encompassed. The waivers were required because of Tiananmen Square sanctions to satellite exports to China. The engineer stated that he was under a gag order, had been interviewed a year earlier by the Justice Department concerning its investigation, and that our boss had known about the investigation for all that time.

In response, the engineer said that our boss had electronically "firewalled," any recommendations to the front office that he had made on the cases so that even he could not retrieve them. In addition, the engineer said that he had been ordered to destroy any hard copy of his recommendations. As a career employee, I felt obliged to report this episode to the U.S. Customs agents who were investigating the Hughes-Loral matter on behalf of the Justice Department. By this time, I had been working with the investigators to provide background papers and positions on previous cases, all relating to China. The Assistant U.S. Attorney and Customs investigators interviewed the engineer. He returned after a number of hours, confronted me and said that the Assistant U.S. Attorney and Customs agents had identified me as the source of their information. The engineer then proceeded to inform the front office.

All of this took place in April 1998. It was during this period and succeeding months that all of our records pertaining to China, in-

cluding past cases, were subpoenaed by law enforcement authorities. The same materials were made available in the central reading room, under the control of the Defense Department General Counsel, to the myriad of congressional committee investigators from the House of Representatives and the Senate.

I personally received two congressional subpoenas, one from Senator Fred Thompson, chairman of the Senate Governmental Affairs Committee, and the other from Representative Christopher Cox. All of my records pertaining to China also were in the hands of the Cox committee, and I was asked about them in depositions to the committee staff.

Since then, the front office has systematically isolated me from any of the major issues with which our organization is involved. In seeking to find out what those issues are, my bosses interpreted my inquires as "spying," and asked me why I wanted to know. In addition, virtually all weekly Directors' meetings had ceased, which remains the case to this day.

The front office also had created a so-called COMSAT group comprised of representatives from every division within DTSA, except mine. My staff and I were kept from any satellite discussions.

This also was the period in which job appraisals were due. I was informed that I would be given an outstanding rating but would not be given a cash bonus. I later was informed that I was the only DTSA Director who received an outstanding rating but did not receive any cash bonus.

The reason given was that I needed to do more work in keeping with senior DTSA management priorities. I asked my bosses how I could be accused of spying, on the one hand, to determine DTSA priorities, but be admonished for not following them in view of the isolation treatment. There was no ready answer.

In my opinion, this act constituted political retribution. The isolation continues to this day. Discussion and action on issues are conducted by the front office, with the participation of a chosen few.

In addition, as people have rotated from my staff, the positions either are not allowed to be filled or the billet is taken away. This was the case recently when one of my Navy personnel retired. This billet was transferred to accommodate an increase in satellite monitors. Congress recently authorized some 30-such billets to DTSA. I then asked if that slot could be returned due to the need we had to fulfill our analytical and monitoring duties. I never received a response.

My Deputy of many years recently transferred to another part of the agency, but to this day the front office has not allowed me to fill that billet either. Instead, I have had to write a series of memos to justify the need to fill it. Still, no response. This slow chipping away comes at a time when we should be doing more analysis and cumulative assessments of technology transfers and determining their impact on U.S. strategic capabilities.

In my opinion, this is one of the value-added roles of the Department of Defense in the export licensing process.

Mr. BURTON. Mr. Maloof, I am sorry to interrupt you but we are trying to stay as close to the 10 minutes as we can. Could you wrap up here? And anything else that you have, we will submit for the

record. I don't want to miss any of your testimony, but we do have to finish.

Mr. MALOOF. OK. Fine.

I would say that in terms of looking for cumulative assessments, Mr. Chairman, I went ahead and started doing my own cumulative assessments because we just did not have that kind of information available over time. I would add that the intelligence community, in my view, still does not look at technology transfers as they used to during the 1980's, and in that context the types of technologies that we have seen going to the Chinese over time have filled many areas that we warned about, particularly in terms of ballistic missiles, modernizing its military.

It has also gone for improvement of power projection for surface fleets, making more proficient fighters and bomber aircraft. And these advances, Mr. Chairman, happen to coincide with those special mission areas identified early in the mid-eighties by the Joint Chiefs of Staff to be concerned about regarding tech transfers.

In referring back to what Mr. Ken Bacon said in that Wall Street Journal article, Mr. Chairman, the Defense Secretary's spokesman said in talking to Maloof's bosses and others, "We do not believe we have allowed the transfer of technology to China that presents national security vulnerabilities."

I would suggest that this conclusion is at extreme variance with the results of the Cox committee study. I have come to realize that there is little recourse for professionals to sound an alarm when the system is unresponsive. I am equally dismayed over the magnitude of the strategic contributions from cumulative technology transfer to China, that they have occurred on my watch, even though I sought to avoid such a development, but instead was isolated, ignored, and subject to political retribution.

The tragedy is not what is being done to me now. The real tragedy is that we will not realize the full military impact and national security threat from these technology transfers for another 5 to 10 years. Only then will we understand the extent and true cost for having mortgaged the security of our children and our Nation's well-being.

Thank you, Mr. Chairman.

Mr. BURTON. Thank you, Mr. Maloof.

[The prepared statement of Mr. Maloof follows:]

Testimony of
F. Michael Maloof
Chief, Technology Security Operations
Defense Threat Reduction Agency
Department of Defense

Before the
House Committee on Government Reform
24 June 1999

Mr. Chairman, Members of the Committee.

I am appearing today in response to a subpoena from the Committee.

My name is F. Michael Maloof. I am Chief of the Technology Security Operations Division in the Technology Security Directorate of the Defense Threat Reduction Agency, in the Department of Defense.

You asked that I address the Administration's efforts to curb the flow of dual-use technology to China and efforts to safeguard U.S. facilities. You also asked for my testimony on intimidation or retaliation against government employees who have been involved in these policy areas and have expressed either reservations or opposition to Administration policies.

I'm not in a position to discuss the Administration's efforts to safeguard U.S. facilities. However, I can address the issues of dual-use technology flows to China, and intimidation.

By way of brief background, Mr. Chairman, I have been with the Department of Defense since 1982. I have been a member of senior management in the Technology Security Directorate since the creation of the Defense Threat Reduction Agency last year.

Before that, I had been Director since May 1985 of Technology Security Operations in the Defense Technology Security Administration when it was in the Office of the Secretary of Defense.

The duties of my staff are to work with other agencies to monitor and act as a catalyst to halt the diversion of sensitive technology to proscribed destinations, their weapons of mass destruction and strategic conventional weapons development programs.

From the data collected and detailed analysis conducted relating to diversion activity, my staff determines what technologies are being targeted and by whom, and then identifies and develops policy issues, and appropriate responses.

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Furthermore, my Front Office accused me of using "poor judgment" in talking to the individual at C3I. This reaction, and its vitriolic tone, took me totally by surprise.

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Indeed, in subsequent cases relating to China, my front office continued to use this mantra of not having a "need to know" as justification to keep me from learning details or the outcome of certain China cases, many of which I had worked at various stages.

I expressed my dismay to the Front office over this kind of treatment. I informed them that in all the years I had worked at the Defense Department and looked into possible diversions, I never had been told to refrain from looking into possible export control violations.

Despite the admonition not to speak to anyone about the Hughes-Loral matter, I called our U.S. Customs liaison officer, who confirmed that there had been an ongoing Justice Department investigation of the case for almost a year. Customs was pursuing the investigation on behalf of the Justice Department. He further stated that continued approval of satellite exports was damaging the case.

It then became apparent to me that the reason for handling Chinese satellite issues among a very few people and keeping quiet any information concerning an investigation was to insure that satellite cases continued to be approved, unimpeded.

I can only surmise that my Front Office recalled previous cases in which we had suspended all license applications of an applicant prior to any indictments or convictions

even before the completion of an investigation. There were two such cases, one of which involved the Dutch company diversion of night vision devices to Iraq, a case I referred to earlier.

Given the admonition not to speak to anyone outside DTSA about the Hughes-Loral matter, I did not think such a restriction applied to people within DTSA.

I approached our satellite technical expert, who immediately became quite nervous. I specifically wanted to know if we were seeing any of the Presidential waivers, and what technologies they may have encompassed. The waivers were required because of Tiananmen Square sanctions to satellite exports to China.

The engineer stated that he was under a gag order, had been interviewed a year earlier by the Justice Department concerning its investigation and that our boss had known about the investigation for all that time.

In response, the engineer said that our boss had electronically "firewalled" any recommendations to the Front Office that he made on the cases so that even he could not retrieve them. In addition, the engineer said that he had been ordered to destroy any hardcopy of his recommendations.

As a career employee, I felt obliged to report this episode to U.S. Customs agents who were investigating the Hughes-Loral matter on behalf of the Justice Department. By this time, I had been working with the investigators to provide background papers and positions on previous cases, all relating to China.

The Assistant U.S. Attorney and Customs investigators interviewed the engineer. He returned after a number of hours, confronted me and said that the Assistant U.S.

Attorney and Customs agents had identified me as the source of their information. The engineer then proceeded to inform the Front Office.

All of this took place in April 1998. It was during this period and succeeding months that all of our records pertaining to China, including past cases, were subpoened by law enforcement authorities. The same materials were made available in a central reading room under the control of the Defense Department General Counsel to the myriad of congressional committee investigators from the House of Representatives and the Senate.

I personally received two congressional subpoenas – one from Senator Fred Thompson, Chairman of the Senate Governmental Affairs Committee, and the other from Representative Christopher Cox. All of my records pertaining to China also were in the hands of the Cox Committee, and I was asked about them in depositions to the Committee Staff.

Since then, the Front Office has systematically isolated me from any of the major issues with which our organization is involved. In seeking to find out what those issues are, my bosses interpreted my inquiries as "spying" and asked me why I wanted to know.

In addition, virtually all weekly Directors' meetings had ceased, which remains the case to this day. The Front Office also had created a so-called COMSAT group comprised of representatives from every division within DTSA, except mine. I and my staff were kept from any satellite discussions.

This also was the period in which job appraisals were due. I was informed that I would be given an "Outstanding" rating, but would not be given a cash bonus. I later was

informed that I was the only DTSA director who received an "Outstanding" rating but did not receive any cash bonus.

The reason given was that I needed to do work more in keeping with senior DTSA management priorities. I asked my bosses how I could be accused of "spying" on the one hand to determine DTSA priorities but be admonished for not following them in view of the isolation treatment. There was no ready answer.

In my opinion, this action constituted political retribution.

The isolation continues to this day. Discussion and action on issues are conducted by the Front Office, with the participation of a chosen few.

In addition, as people have rotated from my staff, the positions either are not allowed to be filled, or the billet is taken away. This was the case recently when one of my Navy personnel retired. This billet was transferred to accommodate an increase in satellite monitors. Congress recently authorized some 30 such billets to DTSA. I then asked if that slot could be returned, due to the need we have to fulfill our analytical and monitoring duties. I never received a response.

My deputy of many years recently transferred to another part of the agency but, to this day, the Front Office has not allowed me to fill that billet either. Instead, I have had to write a series of memos to justify the need to fill it. Still, no response. This slow chipping away comes at a time when we should be doing more analysis and cumulative assessments of technology transfers and determining their impact on U.S. strategic capabilities. In my opinion, this is one of the value-added roles of the Department of Defense in the export licensing process.

I say this, notwithstanding the fact that the intelligence community for the most part is not providing such analysis, whether for conventional or unconventional weapons development programs in countries and suppliers of strategic concern.

Last July, I decided to do such a limited analysis on my own. I determined that the cumulative effect of just some of those exported technologies have provided the Chinese military with an integrated Command, Control, Communications, Computer and Intelligence (C4I) encrypted network not only for modernizing its military but also for its emerging intercontinental ballistic missiles. I let our technical experts review it, as well as DIA analysts. To this day, there has been no challenge to the analysis, which I interpret to mean that it is valid.

In addition to an enhanced C4I capability, I believe that the cumulative effect of other technologies provided to China over the past seven years has given China insights into MIRVing its developing ICBM force and miniaturizing nuclear warheads.

In addition, I believe technology transfers over time have helped China improve power projection for its surface fleets, submarines and long-range cruise missiles, apply stealth technologies to weapons development programs and permitted China's military to produce more proficient fighter and bomber aircraft capable of greater distances and speed.

These advances happen to coincide with those special mission areas identified in the mid-1980s by the Joint Chiefs of Staff to be concerned about regarding technology transfers.

Those special mission areas were nuclear weapons and their delivery systems, intelligence gathering, electronic warfare, anti-submarine warfare, air superiority and power projection.

In referring back to the Nov. 28, 1998 Wall Street Journal, Mr. Ken Bacon, the Defense Secretary's spokesman said, quote, "In talking to Mr. Maloof's bosses and others, we do not believe we have allowed the transfer of technology to China that presents national security vulnerabilities," end-quote.

Mr. Chairman, I would suggest that this conclusion is at extreme variance with the results of the Cox Committee study.

I have come to realize that there is little recourse for professionals to sound an alarm when the system is unresponsive.

Two years ago, for example, Peter Leitner and I approached the DoD Inspector General's office because of our belief that strategic concerns in the handling of China cases were being ignored. We were told to leave.

I am equally dismayed over the magnitude of the strategic contributions from cumulative technology transfers to China, that they have occurred on my watch even though I sought to avoid such a development but instead was isolated, ignored and subject to political retribution.

The tragedy is not what is being done to me now. The real tragedy is that we will not realize the full military impact and national security threat from these technology transfers for another five to ten years. Only then, will we understand the extent and true cost for having mortgaged the security of our children and our Nation's wellbeing.

Thank you, Mr. Chairman. That concludes my statement.

A12 THE WALL STREET JOURNAL FRIDAY, NOVEMBER 27, 1998

Beijing Export Battle: Case Study of One Hard-Liner

By DAVID S. CLOUD
Staff Reporter of THE WALL STREET JOURNAL

WASHINGTON—Michael Maloof is convinced China's military is grabbing sophisticated U.S. technology. His bosses at the Pentagon insist he is crying wolf.

Mr. Maloof is a case study in why the battle over U.S. export policies to Beijing has become so fierce. He is part of a coterie of export-control specialists whose hard-line views, unfashionable since the Cold War's end, have been adopted by many members of Congress and are driving the debate.

He considers Beijing's modernizing armed forces the U.S. military's next major threat. But administration officials portray the 55-year-old career Defense Department aide as a Cold War throwback who can't reconcile himself to the inevitable easing of export controls.

Mr. Maloof, a manager in the Pentagon's Defense Technology Security Administration since 1986, has become a fertile source for hawks seeking evidence of national-security damage. And he is becoming a major headache for Hughes Electronics Corp., which he accuses of knowingly assisting the People's Liberation Army.

Keeping a Diary

In 1993, the Clinton administration eased licensing requirements for products—such as high-speed computers, telecommunications equipment and machine tools—deemed to have both civilian and military uses. The industry hailed the changes, but some Defense Department bureaucrats accustomed to tight Cold War controls were aghast.

It so bothered Mr. Maloof that earlier this year he began keeping a diary of his dealings with Pentagon superiors, which was obtained by The Wall Street Journal.

The export control system is now dominated by Commerce Department officials, whose mind-set is much more pro-export. For years, the DTSA was the influential voice of the Defense Department in export-policy decisions. Now longtime staffers say their role in the process has been downgraded, with the Commerce Department taking the lead role in license approval. The Pentagon even changed the agency's name recently to the Technology Security Directorate.

Under the 1993 licensing changes, the agency, still referred to as the DTSA, has the opportunity to review every license—about 21,000 a year. The sheer volume guarantees a small percentage are examined closely. As a result, Mr. Maloof has claimed, dozens of sales get approved every day with little scrutiny of foreign buyers. "Decisions are being made outside a system created for the purpose of insuring that sensitive technology doesn't get into the wrong hands," Mr. Maloof wrote in an April 14 entry.

Administration Response

Administration officials counter that Mr. Maloof's strong views often taint his analysis of what technology the People's Liberation Army has acquired or what the U.S. can reasonably control.

"There are real ideological differences about what our China policy should be, and within DTSA there are people who feel strongly about this," Pentagon spokesman Kenneth Bacon says. "In talking to Mr. Maloof's bosses and others, we do not believe we have allowed the transfer of technology to China that presents national security vulnerabilities."

People's Liberation Army officers are active in front companies and joint ventures that buy U.S. technology; sometimes their goal is no more nefarious than making money or getting working cell phones. In any event, industry experts say, it is a losing battle to try to deny dual-use technology because European companies eagerly supply whatever the People's Liberation Army wants.

Hard-liners found ammunition earlier this year when it was learned that the Justice Department is investigating whether U.S. satellite makers illegally leaked sensitive missile data to China. During congressional hearings, the DTSA's senior strategic trade adviser, Peter Leitner, echoed many of Mr. Maloof's charges.

"What passes for an export-control system has been hijacked by long-time ideological opponents of the very concept," Mr. Leitner claimed.

House Probe of Exports

A House panel headed by Republican Christopher Cox of California is probing high-tech exports to China, looking for possible national-security damage. The Pentagon's inspector general is examining procedures at the DTSA. Mr. Maloof has been a major source of information for both. He has told congressional investigators that David Tarbell, DTSA director since 1994, has cut him out of decisions about China, often siding with the pro-export Commerce Department in licensing decisions.

Mr. Maloof was interviewed under subpoena by committee aides in August. Last Friday, they called in Mr. Tarbell. Mr. Maloof has also shared his diary and memos with Justice Department and Customs Service investigators. The DTSA itself was subpoenaed by the Justice Department in May for documents about certain China decisions.

Mr. Maloof's criticism of his bosses has included speculating about their relationship with the satellite industry. He wrote June 9 that he met with a Customs agent and "raised concerns for the first time whether Tarbell may be showing unusual favor toward Hughes."

Denial of Favoritism

In a statement, the Pentagon's Mr. Bacon said: "Mr. Tarbell steadfastly denies that he has accepted gratuities from Hughes or has shown favoritism to Hughes."

Mr. Tarbell declined to be interviewed. In a statement, Mr. Tarbell said, "I have always sought to ensure that DOD's recommendations on these license applications look first to protecting U.S. national security. In this regard, there are numerous export license applications that we recommend be denied because they risk transferring sensitive weapons and technologies to potential adversaries." Exports that are approved, Mr Tarbell noted, sometimes are subject to conditions intended to prevent foreign militaries from gaining access to the technology.

In a memo this summer to Mr. Tarbell, Mr. Maloof charged Hughes sold satellite ground stations to China that were "supplied and willingly installed by Hughes for Chinese ground and rocket forces." Mr. Maloof argued in the memo that the ground stations are part of the People's Liberation Army's effort to upgrade encrypted its voice and data communications.

Mr. Maloof claimed Mr. Tarbell said the findings weren't "enough to go on."

A Hughes spokesman denied the El Segundo, Calif., company knowingly sold the equipment, known as VSATs, to People's Liberation Army front companies and noted that the government approved the sales. VSAT units permit voice and data transmission to orbiting satellites via small sending dishes.

Officials of Hughes, a separately traded unit of General Motors Corp., acknowledge they often have limited information about their Chinese customers. Hughes said it sold the VSATs to a company called China Electronic Systems Engineering Co., which several U.S. officials say is associated with the Chinese military. It asked that the VSATs be fitted with a special port and circuit boards to load encryption software, Hughes said.

Pentagon officials say Mr. Maloof's allegations often contain a grain of truth, but dismiss his contention that all sales to the Chinese military pose a security risk. Privately, some U.S. officials say it is desirable for the Chinese military to buy U.S. communications equipment, because U.S. intelligence is familiar with how to tap or disable it.

Mr Maloof's memos, they say, often draw sweeping conclusions based on thin evidence. Still, some of his findings have been explosive. He discovered recently that in 1994 Hughes had hired the son of Lt. Gen. Shen Rongjun, a senior Chinese military official, while competing for a $686 million contract to sell a civilian communications satellite to a consortium that included People's Liberation Army companies linked to Lt. Gen. Shen. By 1996, Hughes got the contract.

In a May 28 entry, Mr. Maloof wrote that the information came to him from an anonymous telephone tip. He confirmed it by checking the DTSA's classified computer data base.

Embarrassed, Hughes said Jun Shen, a naturalized Canadian with a doctorate in computer science, was indeed an employee but had little to do with the project. The Clinton administration was similarly chagrined. In 1996, it had granted Hughes an export license, but the satellite was never sent due to other problems. Now the administration has delayed issuing a new license, partly because of concerns about People's Liberation Army involvement.

Mr. BURTON. Mr. Fox.

Mr. FOX. Thank you, Mr. Chairman.

Mr. BURTON. Mr. Fox, prior to your comments, let me just say that I understand that your statement does not go into the October 1997 memo and who asked you to write it and what you wrote and what happened afterwards. So at the conclusion of your remarks, I wish you would allude to that.

Mr. FOX. Thank you very much, Mr. Chairman. I certainly will.

Mr. BURTON. I just want to state to all of you prior to your testifying, that if there is any indication of retaliation or reprisals because of your testimony, I want you to immediately contact my office and we will look into it, because I don't think you or your families should be penalized in any way for doing your duty.

Mr. BURTON. Mr. Fox.

Mr. FOX. Thank you very much, Mr. Chairman.

Mr. Chairman, Members of this honorable House, I am obliged to appear before you today by order of subpoena. I have neither sought nor solicited this honor. It is an obligation on my part which has arisen through disclosures of a public and independent nature over which I have had no control or influence. It is an obligation not without risk, and I would be less than honest if I did not admit that it is undertaken with no small concern for my personal and professional future prospects.

Duty compels me to be here today. It is a duty enforced by the oath I took as an attorney, and as a member of the public service. In its simplest form, it is the duty to obey the law. It is the obligation to afford the workings of the law and that of a duly constituted legislative inquiry the utmost respect, and it is the duty to execute those responsibilities entrusted to me without fear or favor.

It is incumbent upon me to tell the truth. It is a key responsibility of public service. I am prepared to answer whatever questions you may have with candor and honesty. My answers will be grounded upon direct knowledge, information, and belief. I cannot speculate upon things of which I have no knowledge and will respectfully decline to do so if called upon. Unfounded speculation will only hinder the progress and credibility of this inquiry, and my respect for this House is too great to engage in such conduct.

Two hundred years ago, President John Adams advised his son John Quincy to "never let the institutions of polite society substitute for honesty, integrity, and character." My father, a concentration camp survivor, memorized that phrase and taught it to me when I was very young. I have always tried to comport my career in public service according to that standard. Whether I have succeeded will be determined to no small extent by the impressions you carry away from today's proceedings.

Mr. Chairman, I am the most unlikely rebel. I make no pretensions to any excessive nobility or courage. Whatever distinction I possess in this area is entirely due to the company I find myself in today, and I thank Mr. Maloof and Dr. Leitner for publicly standing by me when few other of my colleagues would.

Mr. Chairman, and members of this committee, this concludes my formal prepared opening statement. Thank you for your kind indulgence. I am prepared to answer any questions you may have.

[The prepared statement of Mr. Fox follows:]

OPENING STATEMENT OF JONATHAN D. FOX
BEFORE
THE UNITED STATES HOUSE OF REPRESENTATIVES
COMMITTEE ON GOVERNMENT REFORM,
THURSDAY JUNE 24th 1999

MR. CHAIRMAN, MEMBERS OF THIS HONORABLE HOUSE:

I AM OBLIGED TO APPEAR BEFORE YOU TODAY BY ORDER OF SUBPOENA. I HAVE NEITHER SOUGHT NOR SOLICITED THIS HONOR. IT IS AN OBLIGATION ON MY PART WHICH HAS ARISEN THROUGH DISCLOSURES OF A PUBLIC AND INDEPENDENT NATURE OVER WHICH I HAVE HAD NO CONTROL OR INFLUENCE. IT IS AN OBLIGATION NOT WITHOUT RISK, AND I WOULD BE LESS THAN HONEST IF I DID NOT ADMIT THAT IT IS UNDERTAKEN WITH NO SMALL CONCERN FOR MY PERSONAL AND PROFESSIONAL FUTURE PROSPECTS.

DUTY COMPELS ME TO BE HERE TODAY. IT IS A DUTY ENFORCED BY THE OATH I TOOK AS AN ATTORNEY, AND AS A MEMBER OF THE PUBLIC SERVICE. IN ITS' SIMPLEST FORM, IT IS THE DUTY TO OBEY THE LAW. IT IS THE OBLIGATION TO AFFORD THE WORKINGS OF THE LAW, AND THAT OF A DULY CONSTITUTED LEGISLATIVE INQUIRY, THE UTMOST RESPECT. AND IT IS THE DUTY TO EXECUTE THOSE RESPONSIBILITIES ENTRUSTED TO ME WITHOUT FEAR OR FAVOR.

IT IS INCUMBENT UPON ME TO TELL THE TRUTH. IT IS A KEY RESPONSIBILITY OF PUBLIC SERVICE. I AM PREPARED TO ANSWER WHATEVER QUESTIONS YOU MAY HAVE WITH CANDOR AND HONESTY. MY ANSWERS WILL BE GROUNDED UPON DIRECT KNOWLEDGE, INFORMATION AND BELIEF. I CANNOT SPECULATE UPON THINGS OF WHICH I HAVE NO KNOWLEDGE, AND WILL RESPECTFULLY DECLINE TO DO SO IF CALLED UPON. UNFOUNDED SPECULATION WILL ONLY HINDER THE PROGRESS AND CREDIBILITY OF THIS INQUIRY, AND MY RESPECT FOR THIS HOUSE IS TOO GREAT TO ENGAGE IN SUCH CONDUCT.

200 YEARS AGO, PRESIDENT JOHN ADAMS ADVISED HIS SON JOHN QUINCY TO "NEVER LET THE INSTITUTIONS OF POLITE SOCIETY SUBSTITUTE FOR HONESTY, INTEGRITY AND CHARACTER". MY FATHER, A CONCENTRATION CAMP SURVIVOR, MEMORIZED THAT PHRASE AND TAUGHT IT TO ME WHEN I WAS VERY YOUNG. I HAVE ALWAYS TRIED TO COMPORT MY CAREER IN PUBLIC SERVICE ACCORDING TO THAT STANDARD. WHETHER I HAVE SUCCEEDED WILL BE DETERMINED, TO NO SMALL EXTENT, BY THE IMPRESSIONS YOU CARRY AWAY FROM TODAY'S PROCEEDINGS.

MR. CHAIRMAN, MEMBERS OF THIS COMMITTEE, THIS CONCLUDES MY OPENING STATEMENT. THANK YOU FOR YOUR KIND INDULGENCE. I AM PREPARED TO ANSWER ANY QUESTIONS YOU MAY HAVE.

Mr. FOX. I am informed by correspondence from the Office of Secretary of Defense General Counsel that any document requests arising from my testimony must be referred to them, and therefore I am not authorized to release any official documents on my own volition.

Now, to the points that you asked me to raise, Mr. Chairman, as a supplement to my prepared opening statement.

In October 1997, I served as the DOD technical advisor on behalf of my then-existing agency, the Defense Special Weapons Agency, to the Interagency Subcommittee on Nuclear Export Controls. It was my job, it had been my job since approximately November 1996, to provide technical review to the various proposed nuclear technology and nuclear material transfer arrangements that are governed by the Atomic Energy Act and the Nuclear Nonproliferation Act.

In October 1997, particularly the week of October 23, 1997, a request for such a review came across my desk. That review concerned a subsequent arrangement of nuclear technology that had been negotiated or proposed under the 1985 Agreement for Cooperation and the Peaceful Uses of Atomic Energy negotiated between the United States and China. As part of the implementation of this agreement, Congress mandated that the President of the United States must certify that any subsequent reciprocal arrangements or technology transfers, particularly concerning nuclear technology, concluded under that agreement, must be designed to effectively ensure that any nuclear materials, facilities, or components provided be utilized solely for peaceful purposes. Congress also determined that arrangements concerning information exchanges and visits negotiated under that agreement would be deemed subsequent arrangements, personal intersection 131–A of the Atomic Energy Act of 1954, as amended, and subject to the required findings and determinations defined under that act.

As the parties to the 1985 United States and Chinese Agreement for Cooperation on the Peaceful Uses of Atomic Energy were both nuclear weapons states, diplomatic channels establishing mutually acceptable information exchange and visitor arrangements were to be utilized in lieu of bilateral safeguard provisions.

I received the request for this technical review on, I believe, a Tuesday or a Wednesday. The request had a deadline of that Friday, October 24, 1997, with the proviso that all reviews must be in, must have been completed, by that date in anticipation of the arrival of the Chinese Premier for a summit to begin the following Sunday.

I reviewed the agreement pursuant to a memorandum of understanding which I had written, as a matter of fact, in 1996, a memorandum of understanding which provided technical support for the Office of Secretary of Defense Policy Division and which allowed our office—and which provided for our office to provide technical assistance and evaluative support for such nuclear technology transfers.

I reviewed the proposed information exchange and technology transfer agreement proposed between the United States and the People's Republic of China and concluded, after my review, that the statutory and regulatory requirements dictated by the Atomic En-

ergy Act and the Nuclear Nonproliferation Act had not been met and that I could not, in good conscience, from a technological viewpoint, certify that the proposed agreement did not pose a risk of nuclear weapons and nuclear military technology proliferation. The United States and China had negotiated an information exchange and technical cooperation reciprocal arrangement. The Department of Energy requested consultative review of this proposed implementing arrangement, in compliance with the provisions of the Nuclear Nonproliferation Act of 1978.

I conducted my review and I detailed the results of our technical assessment. The terms of the then-reciprocal arrangement were relatively simple and direct. The United States and China would be afforded annual opportunities to send technical experts to each other's civil reactor sites, observe operations in reactor fueling, exchange and share technical information in the operation and maintenance of nuclear power generated at associated facilities, exchange detailed confidence-building and transparency information on the transfer, storage and disposition of fissionable fuels utilized for ostensibly peaceful purposes, and disclose detailed reactor site operational data to include energy-generated end-loading.

The criteria that I was authorized to utilize under the support agreement memorandum of understanding was likewise relatively simple and straightforward. Section 131 of the Atomic Energy Act and related legislation such as the Nuclear Nonproliferation Act required a rather thorough inquiry into such arrangements, such proposed arrangements.

The inquiry had to address whether the contemplated state action will result in a significant increase of the risk of nuclear weapons technology proliferation. It also had to consider whether the information and expertise shared under the proposed arrangement could be diverted to either a nonnuclear state for use in the development of a nuclear explosive device and whether the United States could maintain an environment where it would obtain timely wording of the imminence of such diversion.

This process was both objective and subjective to no small extent. Namely, in light of the answers given to those two preceding questions, would the arrangement as proposed not be inimical to the common defense and security?

My assessment concluded that the proposed arrangement presented real and substantial risk to the common defense and security of both the United States and allied countries, an assessment and a conclusion I continue to stand by today.

I further found that the contemplated action proposed in 1997 could result in a significant increase of the risk of nuclear weapons technology proliferation. I similarly concluded that the environment surrounding these exchange measures could not guarantee timely warning of willful diversion of otherwise confidential information to non-nuclear states for nuclear weapons development.

Concurrently, the agreement as then presented to both us and as ultimately presented to the U.S. Congress, could not ensure that whatever was provided under this reciprocal arrangement could be utilized solely for intended peaceful purposes.

At the time I made this assessment, I was not unmindful of the political consequences and the political importance attached to this agreement.

However, the very nature of this contemplated arrangement, in my opinion, required a significant examination of the past state practices of the prime beneficiary of what I believed, in final analysis, to be a technology transfer agreement swaddled in the comforting yet misleading terminology of a confidence-building measure. Inarguably I believe that the People's Republic of China benefited most from what technical information would be generated by these exchanges. I believed then and I continue to believe today that a review of state action particularly in technology transfers concerning nuclear technology and nuclear materials, where the sole guarantee of nondiversion would be diplomatic representations, required a review of past state actions of a prime beneficiary.

Mr. BURTON. Pardon me for interrupting, Mr. Fox. Mr. Shays is going to cover some of this in his questioning. So I think what we will do now, since the time has run out is, we will recognize Mr. Shays. We've got a vote that is going to be 15 minutes, I think you might be able to conclude your questioning before we do that.

Mr. SHAYS. I would be happy to do that.

Mr. BURTON. Mr. Shays.

Mr. SHAYS. First I thank all of our witnesses, and I know it's very difficult for all of you to be here, and when you serve your country and you serve your country well, to have people question it, it must, one, boggle your mind, and, two, make you very angry, and, three, be very hurtful as well.

Mr. Fox, I know you not to be a willing witness in the sense you would just as soon not be here, and I also know that you have a spouse who works in the Government, and it is not easy to do something that might endanger your career or your wife's career, and I also know that you're here to answer, hopefully, the questions that are going to be put before you.

What I would request is that the memo that you sent be put up on the screen. I believe this is the memo that you wrote. It's kind of small up there. Is this the memo that you are referring to in your testimony? You can see it on the screen.

[The information referred to follows:]

Defense Special Weapons Agency
6801 Telegraph Road
Alexandria, Virginia 22310-3398

202
692-2

OCT 23 1997

PMA

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MEMORANDUM FOR OSD/ISP/N&I (MR. MICHAEL JOHNSON)

SUBJECT: Review of Reciprocal Arrangement with People's Republic of China

Keep

In 1985, the US and China negotiated an Agreement for Cooperation in the Peaceful Uses of Atomic Energy. As part of the implementation of this agreement, Congress mandates that the President must certify that any reciprocal arrangements concluded thereunder must be designed to effectively ensure that any nuclear materials, facilities or components provided under this agreement be utilized solely for peaceful purposes. Congress has also determined that arrangements concerning information exchanges and visits negotiated under this agreement will be deemed "subsequent arrangements" pursuant to section 131a of the Atomic Energy Act of 1954, as amended, and subject to the required findings and determinations defined therein. As the parties to this agreement are both nuclear weapon states, diplomatic channels establishing mutually acceptable information exchange and visit arrangements are utilized in lieu of bilateral safeguard provisions.

Keep

The United States and China have negotiated an information exchange and technical cooperation reciprocal arrangement which conforms to the definition of a "subsequent arrangement". Pursuant to Sec 131 of the Atomic Energy Act (42 U.S.C. Sec. 2160), the Department of Energy has requested consultative review of this proposed implementing arrangement in compliance with the provisions of the Nuclear Non-Proliferation Act of 1978. This memo is provided in accordance with the provisions of DSWA Instruction 5100.40 (which governs the agency response to such requests), and details the results of our technical assessment to the Office of Secretary of Defense.

Keep

The terms of the reciprocal agreement are relatively simple and direct. The U.S. and China will be afforded annual opportunities to: send technical experts to each others' civil reactor sites; observe operations and reactor fueling; exchange and share technical information in the operation and maintenance of nuclear power generative and associated facilities; exchange detailed confidence-building and transparency information on transfer, storage and disposition of fissionable fuels utilized for peaceful purposes; and disclose detailed reactor site operational data, to include energy generated and loading.

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Section 131 of the Atomic Energy Act and related legislation

Keep until here

insert new language and D.G's sig. b/k against.

Delete rest

requires a thorough inquiry into such arrangements. The inquiry must address whether the contemplated state action will result in a significant increase of the risk of nuclear weapons technology proliferation. It must also consider whether the information and expertise shared under the proposed reciprocal arrangement could be diverted to a non-nuclear state for use in the development of a nuclear explosive device, and whether the US can maintain an environment where it will obtain timely warning of the imminence of such diversion. This process concludes with a critical judgement, both objective and subjective in nature; namely, in light of the answers given to the two preceeding questions, would the arrangement as proposed not be inimical to the common defense and security?

This assessment concludes that the proposed arrangement presents real and substantial risk to the common defense and security of both the United States and allied countries. It is further found that the contemplated action can result in a significant increase of the risk of nuclear weapons technology proliferation. This assessment similarly concludes that the environment surrounding these exchange measures cannot guarantee timely warning of willful diversion of otherwise confidential information to non-nuclear states for nuclear weapons development. Concurrently, the agreement, as presented, cannot ensure that whatever is provided under this reciprocal arrangement will be utilized solely for intended peaceful purposes.

This assessment cannot be unmindful of the political importance attached to this reciprocal agreement. The very nature of this contemplated arrangement requires examination of the past state practices of the prime beneficiary of what is, in final analysis, a technology transfer agreement swaddled in the comforting yet misleading terminology of a confidence-building measure. Inarguably, the People's Republic of China benefits most from what technical information will be generated by these exchanges.

The post-Cold War era has given the People's Republic little pause for reflection on the wholesale rejection of Marxism. It remains committed to a discredited creed. The political hierarchy retains power through draconian measures, with little heed to global revulsion at the excesses imposed upon its' own people. It maintains an expansionist foreign policy, and openly covets the reacquisition of now independent territories. It is in the midst of a decade long military modernization program which has as an ultimate goal the achievement of undisputed power projection capabilities. China maintains an active nuclear weapons development program, and an equally energetic foreign intelligence service. Long hampered by an industrial and technological imblance with the West, it now seeks to redress that balance through industrial, academic and military espionage. China routinely, both overtly and covertly, subverts national and multilateral trade controls on militarily critical items. It has

repeatedly violated international patent protection conventions to which it has given its' solemn word to uphold, and in the process developed an entire burgeoning domestic economy segment devoted to reverse engineering. In order to maintain influence among a patchwork of remaining ideological allies, China continuously violates international legal and political arms control and non-proliferation regimes through a healthy trade in offensive military capabilities easily modified for nuclear payloads. Within our own country, covert activities by this erstwhile partner to influence domestic political decisions through bribery and influence-peddling are the subject of numerous administrative, legislative and criminal investigations.

In short, we have negotiated a technical exchange agreement concerning critical nuclear technology with an aggressive and ambitious proliferant state unrestrained by political or moral considerations, and which discards diplomatic undertakings with studied regularity. Ambiguities and disagreements under this proposed reciprocal arrangement are, by its' very terms, to be resolved by diplomatic means. In light of past state-practice demonstrated by the People's Republic, this is at best a chimerical safeguard against abuse. Chinese actions within the past year, contemporaneous with the negotiation of this agreement, continue to be so constantly agregious as to belie any disclaimer of past behavior.

Accordingly, unless there exist definite, meaningful verification provisions engrafted upon this diplomatic agreement, there is no practicable way of determining or enforcing adherence to the admittedly peaceful goals enumerated within the proposed reciprocal agreement. Without such bilateral undertakings or unilateral safeguards, the proposed measure presents such significant degree of risk as to be clearly inimical to the common defense and security.

This finding is deeply regretted, but necessitated by the documents presented for review and the past state practice of the People's Republic of China. Please feel free to contact me if you should desire further discussions in this regard.

JONATHAN D. FOX
Export Control Affairs

D. Gallery

~~SUBJECT: Chinese-American Proposed Agreement~~

Given that the 1987 MOU between the United States and China o this subject provides for:

1. The right to obtain information required to maintain an inven of all U.S. supplied items, and of material used in or produced through the use of such items;
2. The right to confirm periodically, on-site, the accuracy of the inventory and the specified peaceful use of all items on this inventory;
3. The right to obtain this information, and to conduct on-site confirmation of this information, for as long as any such inven items remain in China or under its control.

Insert noted

The Defense Special Weapons Agency determines that the proposed Agreement is not inimical to the common defense or the security of the United States.

Dr. Gallaway's Sig. Block

~~Gary L. Curtin~~
Major General, ~~United States Air Force~~
~~Director~~

To John Fox
Call Meeting

Mr. FOX. Yes, it is. This is a copy of the memo of—a rather poor copy, but a copy nonetheless, of the memo I wrote.

Mr. SHAYS. And the first page I see on the right, keep. Who is that? Who wrote that?

Mr. FOX. The notations in the margin are my words. Those are my notes on the memo, and those originate from a discussion that I had with my then superior in OSD policy.

Mr. SHAYS. And you need to identify your superior.

Mr. FOX. Mr. Michael Johnson.

Mr. SHAYS. Now, Mr. Michael Johnson had taken a look at this memorandum that you wrote?

Mr. FOX. Yes.

Mr. SHAYS. And had attempted to reach you just casually, or did he want to speak to you about this memorandum?

Mr. FOX. No, oh, he wanted to speak to me about this. I had completed my memo. I completed my analysis recommending the nonapproval of the Chinese technology transfer.

Mr. SHAYS. I'm going to have you read a paragraph, but the bottom line is, he wanted to speak to you. He contacted you once, he called again, and you finally called him.

Mr. FOX. Yes. I sent the memo in Thursday night. Friday morning, on my way to the weekly Interagency Subcommittee on Nuclear Export Controls, he attempted to reach me several times and finally reached me through our divisional secretary.

Mr. SHAYS. And was he pleased with what he read?

Mr. FOX. No. He was quite upset as a matter of fact.

Mr. SHAYS. Why would he be upset?

Mr. FOX. When I finally did get a chance to speak to him, he indicated that this was not what was being looked for. He indicated that in light of my memo, I would be lucky if I still had my job by the end of the day. He indicated that.

Mr. SHAYS. Was that with a laugh, you know, ha, ha?

Mr. FOX. No, it was not a joke, I assure you, and it was not communicated to me in a joking manner, and I did not take it in a joking manner.

Mr. SHAYS. OK. He got your attention?

Mr. FOX. Oh, he certainly did. Not being independently wealthy, any attempt to cut short my income——

Mr. SHAYS. You took him seriously, and he wasn't happy, and what did he want you to do, throw away your memorandum?

Mr. FOX. No. He indicated that the matter having been decided far above our pay grade, he wanted me to change my memorandum in order to have it reflect a more appropriate conclusion.

Mr. SHAYS. OK. And now he's not even claiming that it was his decision, he's saying someone else above his pay level?

Mr. FOX. Yes, and that is why, sir, I have never held the gentleman personally responsible, and I've never held any ill will against him. I believe that this was dictated far above our mutual levels.

Mr. SHAYS. I don't have a sense you have any ill will against anyone at the moment, but what I do understand is that he then, what, went through the memorandum with you?

Mr. FOX. Yes, he did.

Mr. SHAYS. Paragraph by paragraph?

Mr. FOX. Yes, he did.

Mr. SHAYS. So I assume—the "keep" was that he was comfortable—explain what the "keep" means.

Mr. FOX. Yes. What had happened was that we spoke, and ultimately what was decided was that he wanted from the second page on, the portion with the line drawn——

Mr. SHAYS. Let's go to the second page, if you can.

Mr. FOX [continuing]. To be deleted entirely of my substantive judgment.

Mr. SHAYS. Was that your line or his line?

Mr. FOX. That was his line.

Mr. SHAYS. Pretty clear then.

Let's go to the next page. The third page has another line. So all of that is highlighting, saying out it goes?

Mr. FOX. Yes, sir.

Mr. SHAYS. Now, did Johnson give you any indication of what outcome he wanted from your memorandum?

Mr. FOX. Yes, he did. What happened was when I was ultimately counseled by various colleagues to indeed not fall on my sword, but rather——

Mr. SHAYS. No, I want to know what outcome did he want. You said this was not a good agreement. What outcome did he want?

Mr. FOX. He wanted the memorandum to reflect that there would be no inimical impact upon national security.

Mr. SHAYS. I'm going to ask you to read in the second page that whole paragraph starting with, this assessment concludes.

Mr. FOX [reads]:

> This assessment concludes that the proposed arrangement presents real and substantial risk to the common defense and security of both the United States and the allied countries. It is further found that the contemplated action can result in a significant increase of the risk of nuclear weapons technology proliferation.
>
> The assessment similarly concludes that the environment surrounding the exchange measures cannot guarantee timely warning of willful diversion of otherwise confidential information to nonnuclear states for nuclear weapons development. Concurrently, the agreement as presented cannot ensure that whatever is provided under this reciprocal arrangement will be utilized solely for intended peaceful purposes.

Mr. SHAYS. Now the question is, did you know that there was supposed to be an outcome before you wrote this?

Mr. FOX. No, I did not.

Mr. SHAYS. So you did what you thought you were supposed to do, come to an assessment as was your responsibility. What was your title at the time?

Mr. FOX. My title at the time was arms control specialist; I was an arms control specialist with this additional duty assigned. My title was export control coordinator, something of that nature.

Mr. SHAYS. So you were doing your job?

Mr. FOX. I was doing what was assigned to me as well as an additional duty to my primary duties.

Mr. SHAYS. Now, we could have you read other parts of it, but it's pretty clear that you were saying this was not an agreement that should be carried forward. You were being told that they wanted the exact opposite conclusion.

Mr. FOX. Yes, sir.

Mr. SHAYS. So what I would like is, where did they ask you to insert it? In place of what was crossed out, is that what was asked to be inserted?

Mr. FOX. Yes, sir.

Mr. SHAYS. Do you have that in front of you?

Mr. FOX. I certainly do.

Mr. SHAYS. Now, was that something you wrote or something someone else wrote?

Mr. FOX. This was language that was provided to me by Mr. Johnson.

Mr. SHAYS. Now, did you feel comfortable signing this?

Mr. FOX. No, I did not.

Mr. SHAYS. Tell me why you didn't feel comfortable signing it.

Mr. FOX. Because I believed that it was not true.

Mr. SHAYS. You were being asked by your superiors to say something that wasn't true. In other words, a whole 180 degree turn?

Mr. FOX. Yes, sir, except when this memo was to be—when the new memo was to be submitted, I was specifically directed not to sign it, but to have a more senior individual sign it. My signature on this memo would be too blatant an appearance that I had been indeed coerced into changing my mind.

Mr. SHAYS. We're running out of time. I just hope that further questions just talk about what happened after, to you personally.

Are you still continuing in the same role?

Mr. FOX. No, sir, I am not, and I have not, with one exception, since October 1998.

Mr. SHAYS. Mr. Chairman, I would yield back.

Mr. BURTON. Would the gentleman yield to me real quick?

Dr. Leitner, I understand you were at that meeting.

Dr. LEITNER. Yes, sir; yes, I was.

Mr. BURTON. And you can verify what Mr. Fox is saying?

Dr. LEITNER. Yes, I was there; in fact, Mr. Fox comes——

Mr. BURTON. We've got to run and vote. I just want to quickly ask a couple of questions, then we will come back after we vote.

So the memo regarding our national security, the assessment was made that this was a risk to our national security, was changed 180 degrees from somebody higher up above this fellow's pay level, because, in your judgment, we have the President of China coming over the next week, and they didn't want to upset the apple cart?

Dr. LEITNER. Yes, sir.

Mr. BURTON. Is that your judgment?

Mr. FOX. I was told that specifically, sir.

Mr. BURTON. I thank the gentleman for yielding.

We will be back in about 10 minutes.

[Recess.]

Mr. BURTON. We will reconvene. There will be Members coming back into the room. When we have a vote like this, people get strung out, so if we can have the witnesses back at the table.

I ask unanimous consent that all exhibits and materials referred to during the hearing be included in the record, and without objection so ordered.

We will now recognize the distinguished gentleman from California, Mr. Horn, for questioning. Mr. Horn.

Mr. HORN. Thank you very much, Mr. Chairman.

Colonel McCallum, as I recall, you served in Vietnam, and you were decorated in Vietnam, I believe.

Colonel MCCALLUM. Yes, sir, that's true.

Mr. HORN. And for your work in intelligence, you also have been awarded in your civilian capacity; is that correct?

Colonel MCCALLUM. That's correct, sir.

Mr. HORN. And is this the first time when—the examples that you've shown us and testified on under oath—that you've ever had your work really questioned; is that not correct?

Colonel MCCALLUM. I believe that's the case, sir.

Mr. HORN. Let me go down the lines of the procedures that the Department of Energy is supposed to follow in a situation such as they were creating for you.

There's—it's on the various charts over here, and if you don't have it—yes, it's that document in front of you. I just want to go down the line with a yes/no answer.

Did the Department of Energy in reviewing your situation make a determination if information in question is properly classified; did they or didn't they?

Colonel MCCALLUM. They did not, sir.

Mr. HORN. Did a Security Director interview you, the employee?

Colonel MCCALLUM. I have never been interviewed.

Mr. HORN. The third one is the Director of Security makes a recommendation to the employee's managers. Did that ever happen?

Colonel MCCALLUM. No, Mr. Congressman, that did not.

Mr. HORN. No. 4, after consultation with the Director of Office of Safeguards and Security, the manager either terminates the process in the employee's favor or begins an administrative review proceeding. Did that happen?

Colonel MCCALLUM. No, sir, it did not.

Mr. HORN. And presumably within 2 days of beginning such a proceeding, the manager shall suspend the employee's security clearance. That never happened?

Colonel MCCALLUM. That has never happened, sir.

Mr. HORN. No. 5 of their own procedures is the manager gives an employee a letter of notification explaining why the clearance has been questioned within 30 days. Did that occur?

Colonel MCCALLUM. It did not, sir.

Mr. HORN. No. 6, employee has a right to a hearing upon written request. Now, did you make a written request? You hadn't gone through the other procedure.

Colonel MCCALLUM. I did not make a written request, Congressman. We were informed at a meeting that we attended that I would be given no further appeal process.

Mr. HORN. Yes. Because No. 6 is if the employee wanted a hearing, he must request it in writing within 20 days.

Colonel MCCALLUM. Yes.

Mr. HORN. Did that happen?

Colonel MCCALLUM. No, it did not.

Mr. HORN. No. 7, a hearing officer will be appointed from the Office of Hearings and Appeals.

Colonel MCCALLUM. One was not appointed. In our last letter to the Department, we asked that a hearing officer be appointed from

an unbiased third agency who could adequately review the documents and review the process and report on an unbiased basis. That has not been responded to.

Mr. HORN. No. 8 of the Department of Energy's own regulations, at the hearing the Department is represented by a departmental attorney. The employee has the right to an attorney and may present witnesses and documentary evidence. Did that ever occur?

Colonel MCCALLUM. No, sir, it did not.

Mr. HORN. And No. 9 is a hearing will commence within 90 days of the employee's request.

Colonel MCCALLUM. We have had no response to a request for a hearing at this point.

Mr. HORN. You're saying they don't even answer your request letters?

Colonel MCCALLUM. That's correct.

Mr. HORN. And they have never gone into any aspect of this process which presumably is available to all employees in the Department of Energy?

Colonel MCCALLUM. It is, Congressman.

Mr. HORN. Have you ever had any of your staff that were subjected to those particular procedures for reviewing security infractions?

Colonel MCCALLUM. Yes, sir. That happens routinely in the Department, probably 50 or 60 times a year on average.

Mr. HORN. When there's an infraction?

Colonel MCCALLUM. Yes.

Mr. HORN. And what do they do when it is a first-time infraction and perhaps been done in innocence?

Colonel MCCALLUM. If an infraction is determined to be not willful and deliberate, our own manuals call for the person's supervisor to conduct an interview to determine the reason for the infraction and instruct the offender in the correct security practice. The offender is then sometimes scheduled for a class in either classification or in security procedures, depending on which of the two components may have been violated.

Mr. HORN. It isn't on the chart or the board there, but No. 10, at the conclusion of the hearing, the hearing officer will issue a written opinion within 30 days forwarded to the Director of the Office of Security Affairs. And then No. 11, the employee or Department may appeal any finding of the hearing officer to the Director of the Office of Hearings and Appeals, and the Director will resolve that appeal within 45 days. And then the final one is, based on the opinion of the hearing officer, the Director of the Office of Security Affairs shall make a final decision to reinstate the employee's security clearance or terminate it. And none of that ever applied to your case?

Colonel MCCALLUM. Congressman Horn, I've seen these procedures implemented in the Department on hundreds of occasions in the last 25 years. This is the first time I've ever seen them not carried out faithfully, the first.

Mr. HORN. You're the only one in the last two and a half decades that they have not applied their own due process procedure to your case?

Colonel MCCALLUM. Yes, sir, that's true.

Mr. HORN. They just made life miserable for you.

Colonel MCCALLUM. Attempted to.

Mr. HORN. And also out of change, in terms of needing to get your own attorney and so forth.

Colonel MCCALLUM. Yes, sir.

Mr. HORN. I think, Mr. Chairman, listening to all of this this morning, it's one of the great outrages I have in Government. We expect civil servants to be professional. It's clear that the gentlemen who testified this morning are professionals. And now I'm sure they would agree that if once they've given them the factual information, the political appointees, whether they're Democrats, Republicans, liberals, conservatives, whatever they are, whether they're biased for Asia or biased for Europe, they as the ones in Assistant Secretaryships, Under Secretaries, Deputy Secretaries, Secretary, as well as the White House, they obviously can make a different policy judgment.

But the question is, were the facts beyond that policy judgment? If the executive branch wishes to simply kill off advice coming from professionals, the Congress certainly has a right to that advice. The executive branch is not the king, although sometimes we see those aspects over the last 50 years and even in the last century, and the question is, what do we do to protect whistle-blowers who obviously are patriots, obviously are professionals, and who know their business? And it isn't a question of the administration disagreeing with them. It's a question of having them change their basic factual presentation against their expertise, against their knowledge. It makes it just plain wrong.

Mr. BURTON. Would the gentleman yield?

Mr. HORN. Yes.

Mr. BURTON. Let me just say that the Department of Energy has deliberately, as I said before, tried to block this hearing in every way they could, No. 1; No. 2, they have not complied with our subpoena for information pertaining specifically to Lieutenant Colonel McCallum; and No. 3, I think it will be incumbent upon this committee to find out why that's the case and ask people from the Department of Energy to come up here and explain why the procedures, which are supposed to be applied to every single employee when there's this kind of a question arising, why those—why those procedures were deliberately circumvented and not applied to Lieutenant Colonel McCallum.

So I appreciate that we will be having a hearing on this, and I hope the gentleman will be involved in that one as well.

Mr. HORN. I hope you do that because it certainly cries out for the congressional committee to get them up here, have them give their side of the story, and if they're not going to present us with the written information that we've asked for, then a few contempt of Congress citations shall be taken to the floor. And it's too bad if we have U.S. Attorneys sometimes that turn their back the other way, and we have some in Justice that turn their back, but after you get the evidence down here, we have a real problem in trying to deal with people in a violation of their own procedures within the Department.

Mr. BURTON. Well, if the gentleman would yield further, we said in our opening statement that if we don't get the cooperation of the

Department that we are entitled to as Members of Congress, we will probably move a contempt citation. I would rather not have to do that, but it's a possibility.

Mr. HORN. Thank you, Mr. Chairman. I yield back my time.

Mr. BURTON. The gentleman yields back the balance of his time. Mr. Waxman.

Mr. WAXMAN. Thank you very much, Mr. Chairman. I appreciate the testimony of all of our witnesses.

Mr. McCallum, you mentioned retaliation in your statement, and you've discussed it already to some extent. I just want to make sure that I understand the basic facts. The Energy Department placed you on administrative leave with pay because they say you disclosed classified information in a phone conversation. Is that right?

Colonel MCCALLUM. That's correct, sir.

Mr. WAXMAN. And the conversation at issue which contains the purportedly classified information was recorded; is that correct?

Colonel MCCALLUM. Congressman Waxman, I'm not sure how far I can go in discussing the specifics beyond—I think I can say that those—that it was recorded, but I don't think I can further identify it.

Mr. WAXMAN. And it's my understanding that you don't dispute having a conversation and disclosing information, you just maintain that the information was unclassified.

Colonel MCCALLUM. That's correct, sir.

Mr. WAXMAN. It's my understanding that the Energy Department had access to the transcripts and could have reviewed them for security violations, long before they became widely publicized; is that right?

Colonel MCCALLUM. That's correct, sir.

Mr. WAXMAN. Something did get the attention of the Energy Department though. It was an article published on the Internet detailing your conversation which was highly critical of security at a DOE facility; is that right?

Colonel MCCALLUM. The classification officer is pulling my shirttail here. Just a second, sir.

Mr. WAXMAN. Go ahead and consult with them, yes.

Colonel MCCALLUM. Could you repeat the question, Mr. Waxman?

Mr. WAXMAN. My question is about the Department of Energy—getting their attention on this article that was published on the Internet detailing your conversation which was critical of security at a DOE facility.

Colonel MCCALLUM. I've been asked by the classification officer not to comment on that, because it might further identify the location of information which is contested. I hold it's not classified, but there are some people in the Department that believe it is, and——

Mr. WAXMAN. Is it fair to say that there was an article on the Internet that seemed to catch their attention?

Colonel MCCALLUM. I've been advised not to answer that, sir, respectfully.

Mr. WAXMAN. I'm sorry, what did you say?

Colonel MCCALLUM. I've been asked by the classification officer not to answer that.

Mr. WAXMAN. I don't want to get you in any trouble. It's my understanding that there was an article on the Internet which caught the attention of the Department of Energy, and that this article was published in mid-April of this year. Now, as you may recall, April was a pretty bad month at the Department of Energy. As of then, nine congressional committees were investigating the Chinese espionage issue. Notra Trulock had testified that he had been blocked from pursuing security reforms at the Department.

Secretary Richardson had just ordered the computers shut down at the Federal labs, and Senator Murkowski, the chairman of the Energy and National Resources Committee complained that "the ability to identify accountability in this process is very, very difficult," from Senator Murkowski, and that's precisely the time when the story on you describing your alleged classified conversation hit the Internet.

I can understand why you think your suspension was retaliation. If I were in your position, I would feel the same way. But given what was going on at that time, isn't it possible that Secretary Richardson was told that your case was an example of a DOE employee who disclosed highly classified information, and that if he failed to act, if he hadn't suspended you, he would face tremendous criticism?

Colonel MCCALLUM. Congressman Waxman, I cannot attribute the reasons for the Secretary's actions. I think I said in my opening statement that I believe that it was to discredit and intimidate me specifically for the reasons which you mentioned, that there were numerous congressional committees and the President's PFIAB regrettably who were looking into these issues, and I have the keys to the skeleton closets.

I will say, however, that I find it hard to believe that you would take an action like this without going through the formality of the procedures to review whether there has actually been anything done wrong in the first place. These procedures are described in detail in not only DOE regulations, but in the Code of Federal Regulations, which have been published. And I know of no other exceptions.

So while it may have been the Secretary's intention to make an example of someone, I certainly don't think that it's appropriate to make an example before you determine whether they're guilty or not.

Mr. WAXMAN. I'm not asking you to come to that conclusion, but I'm speculating that a lot of things were going on at the same time, which might have framed his thinking to act in a way that didn't follow the other procedures.

Colonel MCCALLUM. I can only say, Mr. Waxman, Congressman, that the only thing that the Secretary shared with me during our meeting, when I walked in the door, before I was given an opportunity to present my case at all, was that I was guilty. I find that somewhat against the kind of system that I believed, that I had been taught is the way we're supposed to act in this country and in this government. There was no due process. There was no review. There was no interview. There was not even an opportunity for me to explain why the information was not classified.

Mr. WAXMAN. I can certainly understand your feelings. I understand that several qualified officials both inside and outside the Energy Department have reviewed the conversations at issue.

Do you know—well, I don't know if you're permitted to say whether you know whether that is the case or not. But let me ask you, do you know who reviewed the conversations and what they did conclude?

Colonel MCCALLUM. Yes, sir, Congressman Waxman. I can first tell you who I had review the items in question. When the issue first came to my attention, I asked several of my most senior managers, two of my division Directors and the person who is most active in this area, the person we turn to as an authorized classifier, to review the information. All three, two of them in writing and one not, said they were not classified.

I also asked two officials of the Department of Defense who did this business whether they thought they were. They both said they were not, although not in writing. As I said in my testimony, the Assistant Secretary for Defense Programs brought forth two individuals who thought they were. But beyond that, I don't think I can—I don't want to identify further the information or the criteria by which it was looked at. I would like to.

Mr. WAXMAN. I understand. I'm sure you understand that we on this committee are not in a position to review the transcripts and determine whether they contain classified information. But I think all of us would agree that there ought to be a fair inquiry by the appropriate officials and an opportunity for you to be heard.

I understand you're now essentially in a standoff with the Energy Department on how to resolve the allegations leveled against you. What is the status of your dispute with the Department of Energy?

Colonel MCCALLUM. Congressman Waxman, I would hope that we're not in a standoff. What we have proposed to the Department is that, since it appears to me and my attorney that this situation was prejudged before there was any investigation, that I would call an adequate investigation, on any opportunity for me to present either my case or witnesses or to present my technical argument, that this—that the Secretary has himself prejudged this case, in his own words to me. We ask either the Department of Defense or the U.S. Security Policy Board or some other identified third organization that can review this in an unbiased manner with the right technical outlook to review it. And I've offered to live with whatever decision that they make.

I would hope that's not considered a standoff. I think that that's a fair offer as long as I believe I get some due process and some review in the situation. I'm willing to argue my case in court.

Mr. WAXMAN. Well, I agree that you haven't been treated fairly, and I don't understand why procedures weren't followed. What I'm uncertain about is whether this was retaliation or a regrettable overreaction by the Energy Department, and that's something I can't conclude at this point.

But I sympathize with your situation, because it's clear that the Department of Energy did not follow the procedures, and I don't think they gave you a fair opportunity to be heard.

Let me ask some questions of Dr. Leitner. Dr. Leitner, there are a few areas of your testimony I want to clarify. Your disagreements with your superiors have not been limited to the Clinton administration, have they?

Dr. LEITNER. No, sir, they're not.

Mr. WAXMAN. You've raised similar concerns about American export control policy during the Bush administration; is that right?

Dr. LEITNER. Yes, I have.

Mr. WAXMAN. And did you feel the Bush administration was too lax on export control to China?

Dr. LEITNER. Yes. What happened in the Bush administration resulted from a great deal of clouds and uncertainty because of the end of the cold war, and I believe very strongly that they went too far, too fast in relaxing export controls.

Mr. WAXMAN. Did you write a memo to that effect that you circulated to many individuals both inside and outside the Department?

Mr. LEITNER. No. As a matter of fact, my memo stayed within the Department. What I did—the memo that we're talking about, I presume, is the one that is attachment A to my testimony, was an analysis of the cumulative impact of these various controls, decontrol proposals. I tried to show that the methodology being employed was faulty; it was not looking at the system level where the real impacts would be felt.

Mr. WAXMAN. When you wrote this memo, how was it received; how were your concerns received by your superiors at the Department of Defense?

Dr. LEITNER. It was interesting, the reception. First I wrote the memo, and I sent it out for peer review to some of the DOD labs and also to my colleagues, engineers in my office and other places all within DOD. And I asked for their comments about the accuracy and the efficacy of the arguments I was making, and what I was trying to point out. I got a variety of comments, all constructive comments, saying, no, this particular item should be over here, and pointing to this port of a missile, this part of an aircraft, that sort of thing.

So I made changes accordingly, and once I had it validated technically, I sent it to my superiors. It was greeted in an interesting way. My immediate supervisor, the Director of Policy at the time in DTSA, thought it was terrific, and he was running around making copies, giving it to other people in policy, saying, look, at this great thing we have.

Mr. WAXMAN. No one took retaliatory action against you?

Dr. LEITNER. Not immediately.

Mr. WAXMAN. William Rudman was head of your office during the Bush administration; was he not?

Dr. LEITNER. Yes, he was.

Mr. WAXMAN. In the story of the National Journal, Mr. Rudman, who is a fierce critic of the Clinton administration, called you a zealot who was "professionally insane." How do you respond to that?

Dr. LEITNER. Well, for my response, you can just look at the reporting that has been done on Mr. William Rudman over the years. You will find that when he was in the Customs Service how he was

investigated for holding a guy who he accused of being a homosexual at gunpoint, how he was accused of all kinds of violations of basic human values at the Customs Service when he was there.

And if you look at the investigation that was conducted by the DOD IG in 1992, an inspection report where they found all kinds of irregularities regarding Rudman renting a room in an employee's basement and filing false receipts for expenditures. Just look at the IG inspection report. I will be happy to stand in court and compare character between myself and Mr. Rudman any time, any day.

Mr. WAXMAN. You're quoted as saying you had reservations not just about the Bush administration policy, but also about the Reagan administration. Do you feel that the Reagan administration was too lax toward China?

Dr. LEITNER. No, the Reagan administration had a different—an interesting approach. They came up with an approach toward China known as the green line, where they tried to differentiate between China and Russia in terms of a potential threat, and they offered China more liberal treatment. At that time, there was a strategic matrix that they were trying to achieve, and that was to make the Chinese appear to be enough of a threat to the Russians during the cold war that the Russians will have to transfer many troops East of the Urals to the Chinese border so they wouldn't be facing NATO and the United States.

There was actually a strategic doctrine that was being employed as part of this very slow doling out of benefits toward China. Was I a direct opponent of that? No, I was not.

Mr. WAXMAN. Were you critical of it?

Mr. LEITNER. At times I thought on specific proposals we might have gone a little bit too far, and I was critical in specific proposals, internally critical.

Mr. WAXMAN. You've been fairly vocal in your criticism of your office and American export policy. How many times have you appeared on television to air your concerns?

Dr. LEITNER. I don't know, a handful of times, just a few times.

Mr. WAXMAN. How many times have you been printed in a print publication on export control issues?

Dr. LEITNER. A larger handful of papers.

Mr. WAXMAN. How many times have you prepared papers or studies at your own initiative criticizing decisions made by your office?

Dr. LEITNER. As a matter of fact, my testimony documents the major criticism papers that I did that were critical. And I want to emphasize to you that they were internal documents. I did not go to the press with these documents. I gave them to my superiors within the Department.

Mr. WAXMAN. I wasn't asking you about the documents. I was asking about public appearances.

Dr. LEITNER. Public appearances, largely congressional testimony, twice before the Joint Economic Committee, once before the Senate Governmental Affairs Committee, once before the Cox/Dicks committee and then here today.

Mr. WAXMAN. Have some of your criticisms been directed at decisions made in your office that you were not responsible for reviewing?

Dr. LEITNER. Not responsible for reviewing? There are many decisions that are made that I'm not responsible for reviewing. As a matter of fact, that memo that I have in attachment A—the 1990 memo concerned a bevy of decisions that I was not responsible for reviewing. I tried to do a cumulative assessment of those decisions and show what the cumulative impact would be.

Mr. WAXMAN. In your written testimony you say that several factors including "corruption and possibly darker motives, have brought us to a turning point." Can you tell us what evidence you have of corruption at the Department of Defense?

Dr. LEITNER. I'm not an investigator who looks at criminal charges in the Department of Defense. I have seen decisions made on a regular basis that you have to question the motives of people. You try not to do that. You try to simply deal with substantive issues, but there are many actions that take place which just are very difficult to explain otherwise.

Mr. WAXMAN. What do you mean by darker motives?

Mr. LEITNER. By darker motives, I was referring to what the Cox committee found at the national labs in terms of possible espionage. I wasn't limiting myself in that particular comment just to the Department of Defense.

Mr. WAXMAN. Secretary Cohen is a former Republican Senator from Maine. As Secretary of Defense, do you believe that he and other officials of the Department of Defense are deliberately undermining the national security of the United States?

Dr. LEITNER. I have no idea what Secretary Cohen is doing or not doing. I don't deal with Secretary Cohen at my level. Whether it's intentional or unintentional, I can't speak to that. I just know the net result is undermining the national security of the United States.

Mr. WAXMAN. Is it possible that your disagreements with your superiors at the Defense Department are no more than legitimate policy differences between people with strongly held views?

Dr. LEITNER. I would normally think that, and in most cases that's usually the case. I don't deny that there are policy differences, and gentlemen agree to disagree on issues. I know I am not the be all and end all of licensing. I am not a policymaker, I am not a political official, but when you do offer an analysis and then you are retaliated for offering that analysis, that's where the line gets crossed into whether or not it's not just being listened to and being taken account of, it's actually being reprised against and being attacked for your efforts. There may be a difference of opinion where gentlemen might disagree. But gentlemen generally don't attack each other for offering a difference of opinion.

Mr. WAXMAN. You talked about a web of corruption at the Department of Defense. Do you think that Secretary Cohen is part of that web of corruption?

Dr. LEITNER. I personally doubt it. I think Secretary Cohen has not been involved in the export control process to any great extent. He was dealing with much larger policy issues. But I have absolutely no way of knowing. I just know from my vantage point.

Mr. WAXMAN. Has the Department been responsive to some of your criticisms of how your office is run? Have there been changes

made in the office data base to respond to your allegation of memo tampering?

Dr. LEITNER. No. Any changes in the data base on memo tampering, such as the time that I went on vacation after denying two supercomputers to Arzamas–16 and Chelyabinsk–70, in Russia, and I came back and found out that my position was changed and my name left on it in the data base. The procedures that allowed individuals to make those changes have still not been altered. My positions still get changed. My name is still on cases after repeatedly complaining, after talking about it in public testimony, and after speaking to the IG about it.

Mr. WAXMAN. We were told in this committee that the data base has been altered to provide licensing officers with the opportunity to express their own individual views; is that not the case?

Dr. LEITNER. The structure of the data base has not changed in years in terms of that. There's always been a comments section where you can put a comment in, but it's been there for years and years. I haven't noticed any change at all.

Mr. WAXMAN. Have more regular meetings on export licensing issues been held in response to your criticism?

Dr. LEITNER. Not that I've been made aware of.

Mr. WAXMAN. Has there been wider distribution of internal information in response to your criticism?

Dr. LEITNER. Not that I'm aware of.

Mr. WAXMAN. Mr. Maloof, I want to thank you for your testimony today. I would like to ask you a few questions to clarify your testimony.

Mr. MALOOF. Yes, sir.

Mr. WAXMAN. You testified you feel you are the victim of retaliation from your superiors. Are you familiar with the Office of Special Counsel?

Mr. MALOOF. Yes, sir, I am.

Mr. WAXMAN. And have you submitted a retaliation complaint to the Office of Special Counsel?

Mr. MALOOF. No, I have not, because I felt that—judging from previous experiences of other colleagues, that it would probably be futile. It was also my impression that after—I also went through my own system, I went to our Deputy Under Secretary, who immediately referred me back to General Counsel within the Defense Threat Reduction Agency. I went through that channel. Immediately they felt that given the facts that I presented, there was a case of retribution.

I then listened to what Dr. Leitner had to say about his experiences with the special counsel, and I just saw one heck of an uphill battle because of the—of what I perceive to be an approach by them to favor management. And it would have required an expenditure of tremendous resources on my part, and I just did not have the time and energy to put into that and at the same time try to do my job.

Mr. WAXMAN. Mr. Chairman, I see the red light. Did I have two 10-minutes?

Mr. BURTON. Yes, you had 20 minutes. The time goes by quickly.

Mr. WAXMAN. Then I will catch up on the next round.

Mr. BURTON. But you have another 10 minutes on your side at the conclusion.

Mr. Barr.

Mr. BARR. Thank you, Mr. Chairman, for convening this hearing today. As you know, Mr. Chairman, I served with the CIA back in the 1970's and with the Department of Justice as a U.S. Attorney back in the 1980's. And I must say, Mr. Chairman, what we've heard today indicates to me an administration that is so vastly different as to almost be operating in an alien country.

It used to be that spies were prosecuted. It used to be that security measures, polygraphing of employees, regular and very serious monitoring of data bases, information, activities that might be suspicious were taken seriously, and underlying all of the work that we did back in the 1970's and in the 1980's in these areas was a notion that our national security, which protected our sovereignty, was something important. That seems to have been utterly lost by many in this administration. Maybe it was never there, I don't know.

We've read books, Gary Aldrich's books and other gentlemen, and this gentleman leads a very distinguished, impeccable career in public service and in law enforcement. We've read these books. We've seen these documents. We've heard the testimony, and it is absolutely, Mr. Chairman, chilling, the testimony we have heard today.

Gentlemen, I appreciate all of you coming forward, the tremendous risk to yourselves and to your careers. The work that you perform, underlying it are several important components of your job as public servants, the same as ours and mine was when I served with the CIA and with the U.S. Department of Justice as a U.S. Attorney: first and foremost to protect the United States of America; second, in the executive branch to serve the President, and in your capacity you essentially served the President by providing, within the bounds of the law, information to him so that the policy decisions that he makes can be based on the very best, most substantive, most objective judgment of professionals. So when he makes a decision, it's not just sort of a shot in the dark, it is based on learned judgment, and one can criticize any President for a policy decision. That's not your job. As far as I can tell from your testimony, that has not been your job, and that's not the point of your being here, criticize policy decisions of the President or others.

But the scenarios that you all have laid out raise several extremely troubling problems. When decisions that you have made based on your judgment and in furtherance of your job, including protecting our country, are altered to reflect untruths, to reflect information that you know to be false, to be inaccurate, to be inappropriate. Then one of, I guess, at least three different things is happening. Either the word is coming down from the President or from the policymaker to justify a policy decision; or, second, the word is going up to the President to influence a policy decision improperly. Both of those, of course, are corrupt.

Those—that is a corrupted policymaking process, which is bad in and of itself, but there's another scenario that I certainly have no way at this point—whether this is true or not, that raises the most serious problems or questions, and that is those that border trea-

son. If decisions are being made to influence your work, your objective assessment, the data that you have accumulated and put objectively in, substantively into a document, is altered with the purpose of assisting a foreign power to acquire information or data to which they would not otherwise be entitled, and that raises the singularly most serious question that can be raised about a nation's national security, and that is, is it being compromised not because of internal politics or internal decisionmaking, but because of something external, one of our adversaries is seeking to have a policy decision made or changed to reflect and to enable them to gather information, evidence that they would not otherwise be entitled.

So I do not think, Mr. Chairman, that the importance of this hearing, the importance of the problem, the magnitude of the problem that these witnesses have come forward today could be overstated. I appreciate it very much.

There are a couple of specific questions. Mr. Maloof, you talked briefly in your—this is in both your written testimony as well as your oral testimony. On pages 8 and 9, you mentioned an Assistant U.S. Attorney and a Customs investigator. Who was that U.S. Attorney? What U.S. Attorney's office was that out of?

Mr. MALOOF. Out of Washington.

Mr. BARR. And who was the Assistant U.S. Attorney?

Mr. MALOOF. Mr. Pelleck.

Mr. BARR. Would you spell that, please?

Mr. MALOOF. P-E-L-L-E-C-K. He was handling our—has been handling the technology transfer investigation.

Mr. BARR. Thank you.

With regard to Dr. Leitner, you talked at some length about the changing of your position on your computer when you were out of town with regard to superconductors being approved to Russia. How large is the scope of people that would have access to your computer to be able to make that sort of change?

Dr. LEITNER. Well, it was about supercomputers and not particularly large, it would be just be a handful of people. It's fairly narrow. It's on a local area network within the organization.

Mr. BARR. Would you name them, those by name, those people that would have access to it and the capability to make the change?

Dr. LEITNER. Well, specific authorities give with it the ability to make changes in the record. I know that at a minimum, people that have that authority in my office, include Barbara B. Auckland; my supervisor, Colonel Raymond Willson; and I'm not sure who else. It would only be a handful of people, but those are two people who did have that authority or who do have that authority that I know for sure can make such changes.

Mr. BARR. Is there a difference between the authority and the power to go into the computer and either add or detract, but certainly designate and make clear that information is being added or detracted? Does anybody have the authority to go in there in your name, purportedly in your name, make a change that is reflective of what your position and assessment will be? I mean, to me that is criminal, and nobody would have the authority to do that as opposed to going in and adding or detracting information, but making clear that they are doing it, and they're not trying to do it in your name, which would be fraud.

Dr. LEITNER. I agree completely, I believe, and I have complained internally in memos. I've complained to the Inspector General's Office as well that I believe that it is fraudulent. I think there has been tampering with a data base that is supposed to be the official DOD record of its transactions in the export control process, and they were making it appear to be something that it wasn't. They're putting false information in.

Mr. BARR. Has there been, as far as you can tell, any initiation of a criminal investigation by DOJ of this matter?

Dr. LEITNER. No, there has not been any investigation I'm aware of.

Mr. BURTON. Mr. Barr, we will have a second round here in just a few minutes, if you would like.

Mr. BARR. Thank you.

Thank you, Dr. Leitner.

Thank you, Mr. Chairman.

Mr. BURTON. Mr. Waxman has 10 more minutes on the 30 minutes, so we will now recognize Mr. Waxman and then go to you, Mr. Souder.

Mr. WAXMAN. Thank you very much, Mr. Chairman, and when that red light comes on, I'm going to try to conclude my questioning so we can be fair to everybody on the committee.

Dr. Leitner, you said you were a victim of a manufactured security violation. As I understand it, you claimed that another Defense Department colleague planted a classified document in your desk and then executed a surprise inspection of your desk. That's a serious charge if it's true. Could you tell us more about that, Dr. Leitner?

Dr. LEITNER. I would be happy to. It wasn't a surprise inspection. There's no such thing. We've never had anything called surprise inspections. What happened, was during a snowstorm in February, when the Government was dismissed early because of the snow accumulation, I too was dismissed, and went home for the day. Then I started receiving phone calls from colleagues in my office saying, hey, something happened this afternoon that's quite unusual, and the unusual thing is that my supervisor Colonel Willson did something he never ever does, and that's conduct the routine double-check at the end of the day, where we have safes with classified information. And basically what the routine is, you——

Mr. WAXMAN. Let me interrupt you because I do have a limited time. Without going through all the details, you believed that your supervisor planted a classified document in your desk and then criticized you for having that document.

Dr. LEITNER. Yes, I believe—it was a set-up, and it was an intentional attempt to delegitimize me and somehow affect my security clearance and my standing in the office.

Mr. WAXMAN. And did you report this to anybody in law enforcement or anything?

Dr. LEITNER. Yes, sir, I reported it in my chain of command. I set a memo to the head of DTRA, Defense Threat Reduction Agency, Dr. Jay Davis, and in that memo I demanded that the case be referred to the Defense Criminal Investigative Service for a criminal investigation, because I believe a criminal act was committed against me.

Mr. WAXMAN. You believe you had been passed over for promotions and denied bonuses and merit pay increases as a result of the hostility of your supervisors?

Dr. LEITNER. Yes.

Mr. WAXMAN. Are we talking about supervisors other than Mr. Rudman?

Dr. LEITNER. Oh, yes, Rudman is long gone. He was involved quite a few years ago.

Mr. WAXMAN. His replacement and other supervisors are also being critical of you?

Dr. LEITNER. Yes.

Mr. WAXMAN. Mr. Maloof, you testified about your efforts to learn more about the investigations into the Hughes and Loral Corps. After those companies had been under investigation for more than a year, when you first read about the investigation in the New York Times, you received calls from the Public Affairs Office and another office with the Pentagon; is that correct?

Mr. MALOOF. That's correct.

Mr. WAXMAN. And after your discussion with those offices, your superiors told you that they didn't want you involved in the issue; is that right?

Mr. MALOOF. Yes, sir.

Mr. WAXMAN. Now, if I understand correctly, you persisted with your inquiries, right?

Mr. MALOOF. Correct.

Mr. WAXMAN. And you questioned an engineer about the matter?

Mr. MALOOF. That's correct.

Mr. WAXMAN. I understand you were and continue to be concerned about the office's approach to export controls and about satellite waivers for companies like Hughes and Loral, but are you saying that your superiors had no right to limit your role as a point of contact on this issue within your office?

Mr. MALOOF. I would suggest that to do so was to impede me from doing my job in this fashion. I look at all export license applications to end user and end uses as part of my duties. We run those names against data bases, and if there is something out there that is going on that is potentially criminally wrong, and we're adding to the capabilities of another country, I needed to know that.

Mr. WAXMAN. Did anyone in your office ever say that you could not provide information as a witness to law enforcement agencies investigating the Hughes and Loral matter?

Mr. MALOOF. I was questioned extensively about that participation, but eventually it stopped.

Mr. WAXMAN. It stopped.

Mr. MALOOF. The criticisms and the questioning of my providing that information.

Mr. WAXMAN. If I understand correctly, after your conversation with the engineer in your office, you contacted the Customs Service and reported your concerns that there might be a cover-up of some kind; is that right?

Mr. MALOOF. Potential cover-up.

Mr. WAXMAN. A potential cover-up. And the Customs Service investigated your allegations. Did anyone else investigate the allegations?

Mr. MALOOF. Beyond the Assistant U.S. Attorney, I have no idea. They were the proper people to conduct the investigation, because that was part of their responsibility at the time. We certainly could not do anything internally, and after I talked to the engineer, as I stated in my testimony, I was barred from talking to anybody else about the issue, so for me to pursue it independently would have gotten me even into more difficulty.

Mr. WAXMAN. You concluded in your testimony, "It became apparent to me that the reason for handling Chinese satellite issues among a very few people and keeping quiet any information concerning an investigation was to ensure that satellite cases continue to be approved unimpeded."

How did you arrive at that conclusion?

Mr. MALOOF. I arrived at that conclusion because the—for over that year period, very few people were handling details of the satellite cases. My office, when the satellites were under munitions control, was totally bypassed. We never even saw those license applications. I'm told even in recent days by engineers that our management has asked the engineers to expedite those cases even now.

Mr. WAXMAN. Someone told you that?

Mr. MALOOF. I heard it from three different sources, and they were all engineers, Mr. Waxman. And I'm just informed by Dr. Leitner that he's heard the same thing.

Mr. WAXMAN. Mr. Fox, I want to thank you for appearing before us today. As I understand it, you've alleged that another DOD official threatened your job unless you reversed a recommendation concerning a proposed agreement on peaceful nuclear cooperation with China; is that right?

Mr. FOX. Yes, sir.

Mr. WAXMAN. Let's step back and look at what you were asked to do. My understanding was Mike Johnson, who was from a different office, the Office of Nonproliferation Policy, passed on a request from the Department of Energy to review the proposed agreement; is that right?

Mr. FOX. Well, actually, I received the agreement directly from the Department of Energy, and the procedure with that, I would write up my technical opinion and then forward it back to Mr. Johnson, who would then incorporate it within the internal DOD.

Mr. WAXMAN. So your review was supposed to be a technical review?

Mr. FOX. It was, sir.

Mr. WAXMAN. OK. And as you know, Mr. Johnson told the committee staff he was upset about your memo because it went beyond the scope of the technical analysis that he requested. Do you feel that your memo went beyond the technical analysis that Mr. Johnson requested?

Mr. FOX. No, sir, it did not. I disagree with that completely. As a matter of fact, that was never even suggested to me at the time, at the time of this situation. As a matter of fact, sir——

Mr. WAXMAN. Let me ask you, I understand that the chairman put up the memo and asked you some questions, or at least one of the Members did. In the memo you write that the end of the cold war "has given China little pause for a reflection in the wholesale rejection of Marxism. It remains committed to a discredited creed."

How is China's domestic political situation relevant to the technical analysis you were asked to prepare?

Mr. FOX. Sir, the record of state action of the recipient of nuclear technology is a clear basis for determining whether or not the representations given as part of a technology sharing or cooperation agreement have credibility or reliability.

Mr. WAXMAN. One of the paragraphs struck from the memo, I understand Mr. Shays read one of them, let me read another.

> The post cold war era has given the People's Republic little pause for reflection in the wholesale rejection of Marxism. It remains committed to a discredited creed. The political hierarchy retains power through draconian measures, with little heed to global repulsion at the excesses imposed upon its own people. It maintains an expansionist foreign policy and openly covets the reacquisition of now independent territories. It is in the midst of a decades-long military modernization program which has an ultimate goal, the achievement of undisputed power projections capabilities. China maintains an active nuclear weapons development program and an equally energetic foreign intelligence service.

This is your analysis of China itself. I want to know whether you think that the issues you discuss were beyond the scope of a technical analysis.

Mr. FOX. No, sir, they are not. You cannot consider the transfer of technology in a vacuum. You must consider all aspects of a technology transfer, and especially where you have a technology transfer agreement that is verified solely by diplomatic representations, then sir, you must consider state action as part of the overall analysis.

Mr. WAXMAN. Excuse me, I understand what you are saying and I have to get on to the questions.

I want to ask about your working relationship with Mr. Johnson at the time you had the dispute with him. Did you and Mr. Johnson work at the same office of the Department of Defense?

Mr. FOX. No. I worked in one office that was supporting him through a memorandum of understanding.

Mr. WAXMAN. Was he your supervisor?

Mr. FOX. Only under the terms of the memorandum of understanding.

Mr. WAXMAN. Is he in the same chain of command as you?

Mr. FOX. Only in the sense that I served him through a memorandum of understanding as a technical adviser.

Mr. WAXMAN. Did you report to the same political appointees?

Mr. FOX. Only in the circumstances governed by the memo.

Mr. WAXMAN. Did he have the authority to fire you?

Mr. FOX. I think his recommendation in that regard would have carried substantial weight.

Mr. WAXMAN. Did Mr. Johnson's immediate superiors have the authority to have you fired?

Mr. FOX. I think that their recommendation in that matter would have carried substantial weight with my chain of command, especially my senior management.

Mr. WAXMAN. Mr. Chairman, I yield back the balance of my time.

Mr. BURTON. I will reserve my 10 minutes until others get their first rounds. Mr. Souder and then Mr. Ose.

Mr. SOUDER. I thank the chairman. Colonel McCallum, in your statement, and one of the scary things in listening to Congressman Weldon, the number of people that he referred to in addition to the

four in front of us, in your written statement I don't think that you went through some of these names.

On page 11 you say that one site had five Security Directors in a little over 2 years and you name Rich Levernier, Gary Morgan, David Reidenour, Bernie Muerrens, Link White. You also say that numerous security police officers, men like John Hnatio, Jeff Hodges, Jeff Peters, and Mark Graff have all had their careers ruined for coming forward and addressing serious lapses in DOE.

One of the reactions that I had to this is that as somebody who was too young during the McCarthy era to have actually experienced it, but it seems like then there was an abuse of power and a witch hunt for those who were supposedly Communist. What we seem to see in this administration is a witch hunt for those who are anti-Communist. And it is extremely disturbing to see people's careers ruined and side-tracked and demotions because their devotion was to freedom and their concern was about the transfer of power.

Some of us had written a letter—but let me go through a couple of questions.

I understand you and your counsel had a chance to meet with Secretary Richardson on May 27, 1999 to discuss your status at the Department of Energy; is that correct?

Mr. MCCALLUM. Yes, it is.

Mr. SOUDER. We have a letter that I and nine other Members, Congressman Barr, Congressman Bartlett, Congressman Rohrabacher, Congressman Weldon, Congressman Cunningham, Congressman DeLay, Congressman McIntosh, Congressman Johnson, and Congressman Forbes, signed expressing congressional concern about your employment status at DOE, cites your long-standing efforts to enforce and implement the safeguards, and I wondered if you are familiar with the letter?

Mr. MCCALLUM. Yes, Congressman Souder, I am familiar and I want to thank you and the other Congressmen that sent that letter forward for your support and kindness.

Mr. SOUDER. In your meeting with Secretary Richardson, did he mention this letter to you?

Mr. MCCALLUM. Unfortunately, when I walked in the door, Congressman, he did mention it.

Mr. SOUDER. Can you describe that in any way that you are comfortable?

Mr. MCCALLUM. In front of this august body and rolling cameras, he was rather angry. It was clear that he was disturbed by the letter. He held it in his hand and flipped it a couple of times and made the comment that this letter doesn't intimidate me. I play basketball with these guys. This is, expletive deleted, and threw it on the table.

Mr. SOUDER. What do you think that he meant by "I play basketball with these guys"? How did you interpret that?

Mr. MCCALLUM. I understood that to mean I know these guys. I have worked with them and they will play ball with me, and stay away from the Congress.

Mr. SOUDER. Do you think that that was just bravado or do you think that anything happened as a result?

Mr. MCCALLUM. I think it was some bravado. But it was clear that the Secretary went to the PFIAB and although I was scheduled to testify, my testimony was then delayed and ultimately I did not appear before the PFIAB. As some of you may know, Congressman Bliley was scheduled to hold hearings on the security at the Department of Energy last month, and 2 days before the hearings, based on a visit by the Secretary of Energy, he first delayed and then canceled the hearings. So I believe the Secretary has had some impact in the halls of Congress.

Mr. SOUDER. Well, one of my frustrations is that when many of us in Congress feel something very deeply, and one of the frustrations that we have in this committee, we have seen a lack of responsiveness. And I don't know Secretary Richardson well, but he seems like a decent guy, and I don't play basketball so I have not been heavily influenced by that. I understand that this is very difficult, but I think it is outrageous to treat a letter from Congress in this way, including not being responsive to the letter.

I wanted to ask the chairman, I understand that you have a letter also that you have sent to the Energy Secretary, and I wonder if you have received any response?

Mr. BURTON. We sent a letter to the Secretary after a meeting we held in my office, during which he tried to discourage this committee from holding a hearing in very strong terms. The letter has not been responded to, nor has the subpoena we sent to him regarding Lieutenant Colonel McCallum's employment record, and I think that is unfortunate and we intend to pursue that, Mr. Souder.

[The information referred to follows:]

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INDEPENDENT

May 28, 1999

The Honorable Bill Richardson
Secretary, Department of Energy
Room 7A257
1000 Independence Avenue, S.W.
Washington, D.C. 20585

Dear Mr. Secretary:

When we met earlier this week you asked me not to hold a hearing regarding the Department of Energy which would include as a witness Mr. Edward McCallum, who is the Department's Director of the Office of Security and Safeguards. As you know, Mr. McCallum has been an internal critic at the Department throughout the 1990s regarding budget cuts and changes in security procedures and policies. In the 1980s he testified before then Chairman Dingell's subcommittee on security concerns and has long been involved in trying to improve security at the Department throughout Republican and Democrat administrations. As such he appears to be uniquely qualified to address the many current oversight concerns facing Congress in light of the Cox Report's revelations.

Mr. McCallum was placed on administrative leave, as announced by your Department spokeswoman in April. In our meeting on Wednesday, you indicated that this administrative leave action against Mr. McCallum had nothing to do with his efforts to bring security concerns to the attention of Energy Department officials or the attention of Congress. However, you did seem unusually critical of Mr. McCallum's bringing these legitimate oversight matters to the attention of Congress. As you are no doubt aware, one of the unanimous conclusions of the Cox Report was that the Department of Energy had wrongfully withheld information from Congress on critical national security matters.

In addition, there are a number of matters that have been brought to my attention since our meeting that cause me to be very concerned that Mr. McCallum's security concerns and his willingness to bring them to the attention of Congress may have generated retaliatory actions against him. In particular, Mr. McCallum has informed my committee about the meeting, which occurred Thursday morning, May 27, at the Department of Energy between you, Edward McCallum, and his attorneys. I have been informed that, at the beginning of this meeting, you produced and made certain disparaging remarks about a congressional letter authored by Representative Mark Souder, a member of the Committee on Government Reform, of which I am chairman, and signed by nine of our colleagues. Mr. Souder's letter, addressed to you, expressed concern for Mr. McCallum's

employment status at the Department of Energy and cited his long-standing efforts to enforce and implement DOE's nuclear safeguards policies. (See attached).

Specifically, I have been informed that you made remarks to the effect that Mr. Souder's letter "*doesn't intimidate me, this isn't [expletive deleted],*" flung the letter to your office table, and went on to say that "*these guys [members of the House of Representatives] are my basketball buddies,*" inferring that you had the ability to dissuade Members of Congress who might be inclined to pursue matters brought to our attention by Mr. McCallum. Obviously, it was troubling to receive this information. I believe my colleagues and I have legitimate concerns about security at the Department of Energy, as well as possible retaliatory actions against those who try to bring attention to these matters, which may prove politically embarrassing to any particular administration.

In addition, Mr. McCallum informed the committee that one of his attorneys was called to a meeting with the Energy Department's General Counsel, Mary Anne Sullivan, last Friday, May 21. We have been informed that it was then communicated to his attorney that if the Department was not able to find Mr. McCallum in violation of rules regarding classified information, another way would be found to remove him. It was also expressed to his attorney that the Department was not happy with Mr. McCallum's contacts with Congress.

Notra Trulock, the Energy Department official who revealed many of the most disturbing security lapses to the Cox Committee, has pointed out how difficult it was made for him by Energy Department officials to bring legitimate security matters to the attention of Congress. Mr. Trulock has indicated his career has suffered as a result. Just this past week, *Nightline* featured its entire show on how Charles LaBella's career was destroyed after serving as the chief prosecutor in the campaign finance investigation in which he recommended an independent counsel.

I will not be party to any effort to dissuade government officials from bringing important information to Congress especially when it involves national security. Already, a climate has been created by this administration which makes it difficult enough to come forward to tell the truth. Therefore, I did want to inform you that I do intend to have Mr. McCallum testify before my committee next month. We specifically will *not* be going into any classified matters in that hearing.

I would be happy to discuss this matter with you further.

Sincerely,

Dan Burton
Chairman

cc: The Honorable Henry Waxman

Mr. SOUDER. I thank the chairman.

One of my frustrations, and anyone watching this hearing has to feel it is surreal. On the one hand we are trying to talk about how to apply whistleblowing protections to patriots and people who are calling attention to these problems, and that is the immediate need we have in this country. But meanwhile, what we seem to have seen is nuclear secrets getting into the hands of our enemies, both through overt spying and through technology transfers, and we are sitting here holding hearings on trying to get into defending Americans who try to call attention to that who then get punished. Talk about the world being turned upside down. I understand that there can be disagreements, and I understand the pressures that are brought to bear to many Members of Congress, and we feel pressures from supporters and companies back home, but to see memos being forced to change.

In my second round I would like to get into who some of these people were, and how we get into that question and the process because I think that the deeply disturbing thing is that it appears to me that the reactions to the secrets going out has rather been to punish the people who were trying to warn and do something about it rather than getting into the problem that we have compromised our national security. I think this is outrageous, and I thank you for your willingness to come forward today.

Mr. BURTON. Thank you, Mr. Souder. Mr. Ose.

Mr. OSE. Thank you, Mr. Chairman.

Dr. Leitner, I want to make sure I understand the surge you highlighted in your testimony about the computer issues. If I understand the current export regime, we have a limitation of so many MTOPS on what kind of equipment we can send overseas. And over time, the cap, if you will, has increased and it is either currently at 2,000 or it is proposed to go to 2,000 MTOPS, the rationale being that you can acquire that kind of capacity overseas at present anyway.

Then there is a discussion as to whether or not to take the regime to 7,000 MTOP level at present.

If I understand the Cox report, and the reason that I am asking this question, I want to understand why the administration would—or the Department of Energy would, if you will, attempt to interfere here, with its personnel and what have you. If I understand correctly from the Cox report, the capacity to do theoretical projections on nuclear weapons is in large degree a function of the level of MTOPS that you have available in your computer, that being that the lower the level, the more inaccurate or unreliable the projections from an analysis within a projected outcome?

Dr. LEITNER. Well, MTOPS is a predictor of more than anything else speed, not capability in terms of analytical capability. Very often apples and oranges get mixed up.

You have to wait longer for your answer to a complex problem with a slower computer, but over the years we have heard justification for allowing more powerful computers to be exported as, one, they can't really use them for nuclear simulation and modeling because you need to have real test data or accurate test data.

Unfortunately, as Lieutenant Colonel McCallum and as Notra Trulock have reported, and the Cox committee has reported, that a lot of test data appears to have walked from our own labs.

So when you combine the effect of higher speed computers, higher capability computers with actual real live test data, such as that stolen by the Chinese and you have an extremely deadly combination. You have the ability to leap frog generations of development trial and error and come up with virtual simulation of nuclear tests which helps advance a nuclear proliferation program, help them develop special effects weapons, et cetera.

Mr. OSE. At some level of speed you can use a two-dimensional analysis of the projected outcomes, which is relatively inaccurate compared to three-dimensional analysis above that level, and that is where the debate occurs, if I understand the Cox report, as to where that level is at present.

Dr. LEITNER. That is one of the arguments made, but that debate very often becomes an arcane debate which is intended to create smoke and mirrors basically. Yes, a three-dimensional model will yield better, more informative results than a two-dimensional model. That goes without saying. But how much of that relates to the actual MTOPS, the processing power, is another story. It is like looking at an oscilloscope and saying a 2 gigahertz oscilloscope will really give you some neat test results if you can capture the data using that sort of device.

But for nuclear test results, 500 megahertz is all you need to really engage in nuclear testing and analyze the results of nuclear testing. Two gigahertz is very important but more for telecommunications, fiberoptic, C3I, and satellite communications. It does give the value added for nuclear testing, no doubt about it, but it is not essential.

So the lines that get drawn and the arguments that get made are convenient. They shift like the sands of the Sahara depending on the political needs of the people making the arguments, and they are almost always unreliable.

Mr. OSE. One of the points of your testimony is the aggregate impact of the piecemeal transfer, that being you send this piece here and then they put it together with a piece over here, and all of a sudden they bring the pieces together and we are no longer three, four, five generations ahead of them, their equipment becomes comparable to ours.

Was that the substance of your point to leadership that we were allowing our export in aggregate to develop the technology that would make them the equivalent of ours?

Dr. LEITNER. Yes, sir, it was.

When I authored that memo attached to my written statement in 1990, I was basically illustrating that the particular metric that was being used is not a metric at all but it is a phrase called the gap closer. You look at these individual technologies, transducers, resistors, all kinds of A to D converters, they were trying to adjudicate whether or not the decontrol of this particular item, would have gap closing potential between us and whomever "them" happens to be in the future. The answer almost invariably will be no. There is no one separate component that is going to make a revolutionary difference. The aggregation of various advances in various

fields that get integrated at the systems level is what I was showing in that chart that was so violently received when I offered it.

Mr. OSE. Thank you, Mr. Chairman.

Mr. BURTON. Thank you, Mr. Ose, for your patience. Did Ms. Schakowsky leave?

Mrs. Chenoweth.

Mrs. CHENOWETH. Thank you, Mr. Chairman. As I sit here and listen to your testimony, I am absolutely astounded that we have Americans like you who are willing to place your personal safety, your career, and your future in harm's way to protect my generation, my children, and my grandchildren. I cannot tell you how deeply grateful I am to you. And I do know how difficult this hearing is for you. But from the bottom of my heart, thank you so much. And I know that when the chairman says that he will not be kind and will be protective with regards to any further retaliation, I know he means it and I am sure that this body stands united behind that position.

Dr. Leitner, I wanted to ask you, you made a very troubling allegation that on one occasion your supervisors actually changed your technical analysis license position from denial to either no position or approval. And in the case of the Russian supercomputers being approved for exports to two known nuclear design facilities, how did you find out about this?

Dr. LEITNER. It was purely fortuitous. I knew that this position would be important. They were very important cases and I put in my position before leaving. I was taking my family to Disneyland on vacation, which is pretty appropriate given what happened.

And then, when I came back, I decided to just look into the status of those cases. I almost never do that because you get too many cases to go back and audit the results. Plus I was just curious, I wasn't looking for anything. I wouldn't imagine that somebody would simply change my position and make it appear as if I entered that position.

When I got back from vacation I opened up the computer and I looked in there. I was just astounded to find out that it was not the position that I authored. Before leaving on vacation, I did print out copies of the position that I put in. And then I forwarded that along with the revised new position still bearing my name to my chain of command complaining and demanding an investigation.

I think the data base is corrupt, and God knows how many other times the same thing has happened. And you wouldn't know until something blows up and somebody is doing an after accident report, as happened with Iraq, when Congress subpoenaed thousands of records of export licenses. Is there an audit trail and who approved what and why, and you have no evidence as the person doing the position that you did otherwise other than what appears in the electronic record because everything else is destroyed?

Mrs. CHENOWETH. Precisely what impact did the change have on the outcome of this case?

Dr. LEITNER. Well, it was pretty funny what happened in a macabre sort of way.

While the case was still hanging around and a formal denial did not go out, it was revealed by Gary Mulhollin from the Wisconsin Project on Nuclear Export Controls that there was a diversion of

several computers to those same facilities, that they were illegally acquired in the hiatus between the time I issued my denial and the case was still languishing. In the meantime, there was a diversion of computers to Russia right to those same facilities to engage in nuclear design work. Sixteen of them I am informed by Mr. Maloof, 16 supercomputers, a national security disaster as far as I am concerned.

Mrs. CHENOWETH. Doctor, I wanted to ask you about the McDonnell Douglas machine tools case, which is also very alarming to me. These tools are the very tools that produce the C–17 military planes, and you stated that your supervisor actually ordered you to change your position of denial to an approval because a decision, apparently from higher up, had been made to approve the case.

Now, did you draft an approval position? Do you know who ordered the approval of this case? Third, who do you think ordered it?

Dr. LEITNER. I never wrote the approval conditions. I wrote the three or four page single spaced denial position on the case. Michael Maloof and I worked very closely together on this case and we were able to find out that the end user that it was alleged that these machine tools would be going to never existed. We even had the National Photographic Intelligence Center put together a briefing showing how, during the course of the whole odyssey when the Chinese were trying to pressure McDonnell Douglas and intimidate them into providing this facility, there was actually no activity at the location where these machines were allegedly going to go to, but instead at a cruise missile factory, there was a new wing being built, and holes were being dug to receive the machine tools. The machines eventually were diverted, some of them directly, to that cruise missile factory.

I was ordered to change my position. I refused to do it. I said there is no way I am going to do that. The case was taken away from me, and my supervisor at the time went ahead and put in a position of approval saying that he was being instructed to. The instructions to my knowledge came from—the chain of command at the time was the Deputy Assistant Secretary for Counterproliferation, Mitchell Wallerstein, David Tarbell, the Director of DTSA at the time, and his Deputy, Peter Sullivan. And following below that, it was either Mike Richey or Jim Woody, the Director of Licensing, but I don't remember when they—who was in charge at that particular moment. One succeeded the other.

As for the real reason for it, I would rather not venture a guess. I have plenty of theories.

Mrs. CHENOWETH. Thank you, doctor. Mr. Chairman, I see my time is up, but we will be having a second round of questions.

Mr. BURTON. We will, I know that this is extremely important what we are hearing today. I would like to tell the Members that after this panel, we are going to go into a closed door session in a cleared room for the last person because we are going to have some classified material. The only people that will be allowed in that room are Members and staff cleared for top secret.

Mrs. Morella.

Mrs. MORELLA. Thank you, gentlemen, I appreciated your courage and patriotism. I represent a great number of Federal employ-

ees and retirees, and I feel strongly about civil service and how paramount it is to a good democracy. And I was one of the cosponsors of the Whistleblower Protection Act in 1989 and then the enhanced amendment in 1994.

It just seems to me from what I have read and what I have heard that it obviously is not working for you. I know that I have had a recommendation, I think it was Congressman Weldon said we should do something about it. I want to ask you what we should do about it.

Is it in your view that we should come out with a piece of legislation that will deal with people in high security to make sure that they are given the whistleblower protections that they deserve? Anything else that you think that this Congress can do? My attitude is, what are we going to do about the future? We can go back and look at the past, but we need to learn from it. I know that this committee agrees that we want to move ahead and see what we can do.

The second point, this morning I was chairing a hearing of the Technology Subcommittee of the Science Committee, and it is interesting, we were discussing what was happening with our security websites in terms of computer security. And as I am looking at the reports here, I am noticing that Colonel McCallum, in your testimony, you talk about some of the very things that came out this morning in our hearing dealing with the concept of computer security. The lament we heard was basically there is no implementation. We can have some policies and we can say agencies should do this and do that, but there is no implementation and there is that element of anonymity there which is a real barrier to being able to follow through. So I am wondering, I feel we should do more with regard to making sure that agencies, certainly the high security agencies, should have more of a responsibility for implementing the guidelines and the regulations we have.

If you have some suggestions to offer to us at this time and then maybe later, I would appreciate it. So if you would respond to what our role can be in computer security and making sure that whistleblower protection is protection and protects all of our people, particularly people in your high security situation, I would value it. Whoever wants to start.

Mr. MCCALLUM. I can kick it off since I raised the computer security issue. We struggled in the Department of Energy for years with the separation of classified and unclassified computer systems. I think as far as I know, at least within the Department of Energy, our high security computer systems have not been penetrated by hackers or others. But with the growth of personal computers and office LANs, networks, and WANs, a different set of issues developed.

In the eighties the—the National Institute for Science and Technology developed a set of—and it may have been before their name changed, a set of criteria to provide what I would call prudent business security, the kinds of things that you see banks and the people who have to transfer money implement.

In most of our Federal agencies those programs which have been required to implement these standards over the years have not bothered. In the early years, there was some attempt to use the

budget to assure implementation. Unless you had adequate security plans and elements in place, you couldn't buy new computers. Oversight went away over time. When you look at our national laboratories, you find very poor security practices on what is called unclassified but sensitive material. We have seen in the Department of Energy that it is very easy to take classified material and walk it across the hall and put it on unclassified systems. Some of the proposals that we made in the 1995 timeframe included some simple tasks like the use of different size floppy disks between your classified and unclassified systems so somebody can't just avoid the security practice. There are very simple implementation tools, but how do we make our laboratories or agencies use them?

One of the levers might be the budget. If you don't have at least some kind of a process to review these kinds of things and some kind of an oversight process, maybe the budget gets hit. I don't think that people in this town pay much attention to things other than budgets, at the implementation level is what I mean.

Another area is the whistleblower protection issue. I was rather astounded to find that all of the things that we had learned about people bringing forward problems, and I was very familiar with these since Secretary O'Leary raised the flag and called whistleblowers in to the table during her reign at the Department of Energy, but I was astounded to find that there is a serious loophole in the protection system. The Merit Systems Protection Board is—in some circumstances unable to look at cases where people have done their job, but an agency can pull a thin guise of national security to halt the process. That is what I meant by national security metric. It does not necessarily have to be there but they have the trump card. There should be an impartial third party, an institution, that has the authority to look at these cases. No single organization should be able to by personal or political whim crush "due process" for any citizen of this country.

Mrs. MORELLA. I think it was again Dr. Leitner's testimony where he talks about the IG. I have always felt that IGs should be involved in this process of ameliorating concerns. If anybody wants to address that. Mr. Maloof.

Mr. MALOOF. I also raise the IG issue because Leitner and I went up at the same time, and we were asked and invited.

Mrs. MORELLA. That was in your testimony, right.

Mr. MALOOF. I know your time has just run out, but three recommendations. The ombudsman idea not only for the IG, but also a mechanism by which people with clearances can go to members or to staff who are appropriately cleared with proper information if our system refuses to act on it or is in some way ignoring it. I think that there is a problem here, that members are not being informed adequately or in a timely way.

Last, curiously, we could not get the Department to give us legal representation if we sought it, even though we were brought up here in our official capacity. They represent the Department, they have made that clear, and I think we may need a mechanism to allow for representation if under these kinds of unusual circumstances we are invited or subpoenaed up and we request representation, that there is a mechanism to do that.

Thank you.

Mr. FOX. Ma'am, I would just bring up three points quickly. As an attorney, nothing breeds personal responsibility like three little sentences. Personal liability, punitive liability, and mandatory criminal sentences. I honestly believe that the Whistleblower Act cannot become effective until you have those types of penalties made applicable against those who direct retaliation against government individuals, against government officials and public servants who tell the truth. Those three elements.

Mrs. MORELLA. Personal liability?

Mr. FOX. Personal liability. Personal liability where retribution is shown to be directed by a specific individual. Punitive liability in some significant multiple of damages suffered. And finally, mandatory criminal sentences. That is a violation. Retribution is a violation of the public trust that we are all sworn to uphold. And where it effects national security, I contend that mandatory criminal sentences are nothing less than totally appropriate.

Thank you, ma'am.

Mr. BURTON. I thank the gentlewoman. I will now take my time. First of all, let me say that I have a granddaughter and a grandson, and what I have heard so far today really causes a knot in my stomach. We found out about Wen Ho Lee, the alleged espionage person at Los Alamos who was left there for some time, and the technology transfer. According to many scientists, it was so bad that the Rosenberg espionage pales in comparison, and yet it appears that the American people do not seem to be that concerned about it. We all say the cold war is over.

The fact is, we have a monolithic army in China that now has all of this nuclear technology that we have spent trillions of dollars developing, and they have the computers and all of the other things necessary to implement these things and we don't know how long it will take. At the very least, that entire part of the world is at risk and possibly the entire world. We don't know what the future holds.

And then we hear from people like Lieutenant Colonel McCallum that at our nuclear laboratories the security has been cut. The budget has been cut by as much as 40 percent, that in certain areas the number of personnel that is supposed to be there to protect the laboratories and protect the supplies has been cut, and the documents that people use, the passes that people use, the three colors that they use to get into different facilities was combined into one so that the people in charge of security cannot tell who is going in and out.

And then we find out that—from Dr. Leitner that he comes back from Disney World or Disneyland and he finds that his computer has been tampered with and that a report that he has done has been changed 180 degrees. And then, you know, we hear him being questioned about whether or not he is paranoid about his superiors.

The fact is, as I understand it, your classification was reduced from five to four about a year before this alleged document was in your desk and you brought it to their attention when they tried to pin some kind of security leak on you. So they were already giving you a hard time before that ever took place. And the only way that could have taken place in the first place was if you were a security

risk and they could prove it. I don't think that that was the case when they lowered you from class five to class four, was it?

Dr. LEITNER. No, sir.

Mr. BURTON. And Mr. Fox, I read this memo from Dr. Leitner, and I am going to read just a little bit of it.

Mr. Fox wrote his report. After the report was sent, he was evidently talking to Dr. Leitner and Dr. Leitner records that upon returning, they were having a meeting, upon returning about 15 minutes later Mr. Fox was visibly shaken. He asked what was wrong and they went into the hallway to confer. He said he was just ordered by Johnson, that is Mike Johnson of OSD and PP, he said he was just ordered by Johnson to completely rewrite his memo from one stating that China was a nuclear proliferant to one stating that they were not, a 180 degree reversal. Mr. Fox related in great detail how he explained to Johnson that such a change would be false and dishonest. At that point Fox stated Johnson threatened to have him fired unless he made the changes. He said that Johnson's manner was very aggressive, abusive, and threatening. Mr. Fox was quite upset about being blindsided like this. He said that he cannot afford to lose his job, his family is very dependent upon him and his income, and he didn't know what to do. And so he did what he had to do, he changed the document.

My gosh, we are talking about the security of the United States of America. And just because a foreign leader is coming over here, whose country has been involved in espionage at Los Alamos and Livermore and elsewhere, and because we want to keep trade going on with him, we start mandating from higher ups, from way above Mr. Fox's pay grade, Mr. Johnson, who said that we have to change the document and lie to the American people and lie to his superiors. The other people who will be reading this document have to lie about whether or not the Chinese are entitled to more nuclear technology because they are a nonproliferator, and of course we know that is not the case. That just boggles my mind. You know, some people might say you fellows all have an ax to grind and the gentleman that is going to go into the classified briefing has an ax to grind, but you are not all together. You are not covering each other's backside. By virtue of the fact that you are coming from different areas and different perspectives, it lends more credence to what you are saying. We have a whole host of people that we are going to be interviewing who have been held up to ridicule, who have been penalized because they suffered similar things like you have. I can tell you that we are not going to let this rest.

The last thing I would like to say before I ask any questions, if I have any time left, is that the Secretary of Energy, whom I did play basketball with, and I used to beat him occasionally, Mr. Richardson, when he holds up a letter and says, hey, these guys are friends of mine and I play basketball with them and this letter doesn't mean blank, I want you to know that letter did mean blank. It meant a lot. And while I have high regard for Mr. Richardson, he went over to Iraq and got our prisoners out of there and I think he has done some commendable things. But when he came into my office and indicated that Colonel McCallum was going to be fired or demoted or reassigned, and tried to persuade me that we could not hold this hearing under any circumstances, and then

he and his people went to the Speaker of the House and went to the majority leader and the majority whip and tried to convince them that we should not have this hearing, I think that is going beyond the pale. I am very disappointed in his lack of cooperation with this committee and his trying to stop this hearing and impede the congressional process. Now we sent a subpoena to him, as I stated earlier, and he has not complied with the subpoena and he has not responded to my letter. He has not responded to Mr. Souder's letter. In fact, he is just plain ignoring the Congress of the United States and this oversight committee. I intend to ask him to testify before this committee, along with some of the other people, about some of the things that have happened and we will be doing that in the near future.

I would like to have from you, gentlemen, before you leave or at your convenience, I would like to have a list of the people that can corroborate what you have told us here today, or other people who may have suffered the same kinds of problems in these various agencies, particularly the Department of Energy and the Department of Defense. We will investigate those people as well and we will have them talk to our attorneys so that we can get to the bottom of this because there should be no person in a top secret position in this country, especially where our national security is involved, that is afraid to talk about violations of security.

Every man, woman, and child depends upon all of you and people like you out there to make sure that our secrets are not given to potential adversaries where they can use them at some point in the future to blackmail us and endanger the lives of the people that we are supposed to represent. I would like to have that information from you and we want to pursue this. I will work with Connie Morella to make sure that the whistleblower statute is enhanced so that there will be protections.

I also don't believe that you ought to be able to come up here and be denied legal counsel. If you are coming up here at the request or subpoena of the Congress of the United States, you should not have to, out of your own pocket, hire legal counsel because you are an employee of that agency and you are under a duly authorized subpoena. I think you should be reimbursed for your legal fees if you have any, and at the very least we are going to make sure in the future that you don't have to deal with that kind of a problem because we are going to move for legislation to deal with that.

Does anybody seek to have any more of my time?

Mr. SOUDER. Yes.

Mr. BURTON. Mr. Souder, I yield to you.

Mr. SOUDER. I hope that we can work with the DOE for some sort of protection. If these gentlemen identify other members of the anti-Communist cells, it is almost like the early fifties backward. If people are willing to come forward, that they get some protection and they are not also singled out because we don't want to identify the anti-Communist cells and have them bashed.

Mr. BURTON. Let me ask one question. Mr. Maloof, you referred to front companies?

Mr. MALOOF. Yes.

Mr. BURTON. Could you tell us about any front companies that you are aware of or where they have been used to transmit information or material to a foreign entity or government?

Mr. MALOOF. I think the identity of many of the companies is something that we can handle in a classified session. Generally speaking, if a product cannot be obtained legally through a licensing process, it has been my experience to find that that item then is sought piecemeal or in entire form as part of an indigenous weapons development program. They may be going through Asia, Europe, or a combination of countries.

Mr. BURTON. If some of that information is classified, I would like to officially request it, and we will do that in closed meetings and we will get together with Mr. Waxman so we have the minority there as well.

Mrs. Morella.

Mrs. MORELLA. Dr. Leitner didn't have an opportunity to answer before, and I want to give you that opportunity.

Dr. LEITNER. Thank you. I appreciate that.

One of the things I really recommend be read, since you mentioned the issue of implementation, and how things fail in implementation, is an excellent book written by Abraham Wildovsky entitled, "Implementation." The whole point of the book is that policy statements notwithstanding, political statements notwithstanding, the actual policy is seen in its implementation. If you want to see what the real policy is, look at what has been implemented because what is on the ground is what the real policy is. It is a great book, and I recommend it to any student of political science to read.

One of the things I really would hope that would come out of this in terms of a regulatory fix that at a minimum, would make the agencies follow their own rules. We have the example of Lieutenant Colonel McCallum being victimized by an agency which at its own discretion applies rules when it suits them.

The same thing is true in the Department of Defense. I have had the same experience of trying to go through the process of a grievance on an issue, a personnel issue, and find that the entire system is loaded in terms of protecting management. The individual employee has virtually no rights. The personnel office is generally there to support management and they tell you this. You ask the personnel office, will you represent me in this quest for this grievance on this personnel issue, they say we can't do anything for you because we are here to represent management. They tell you this in an unabashed way, and you have no where else to go, even for an interpretation of the rules. Deadlines, drop dead dates on grievances are strictly enforced when it comes to the complainant. Yet for the agency, who is the perpetrator of whatever the onerous action is, they give themselves extensions and all kinds of time while consistently missing their deadlines and the case is not dismissed.

It has been my experience on EEO complaints, on political complaints, or administrative complaints, that the appeals process or the grievance process is more akin to a gauntlet which an employee has to run and it is never ending. The people at the beginning of the line you are going through move around to the end of the line, and the end never appears. You never see the end of the tunnel. It is designed, in our collective impression, to enervate the com-

plainant to the point where there is no life left in them if they ever get to the end of process. I think that is a real problem.

Also, if it can be fixed so that the Office of Special Counsel can operate and react faster, that would be a great boon because right now they move in what can be approximated as geologic timeframes. By the time your complainant actually starts getting investigated, you have retired or been fired or so beaten down that you are compliant.

So I think in a practical sense these fixes really need to be made because on the ground again where policy really is and its implementation, it is very different than the public statements of the executive branch.

Mr. BURTON. Thank you.

Mr. Waxman.

Mr. WAXMAN. I want to say that I am struck at this hearing by the differences I see in Lieutenant Colonel McCallum's case and that which is presented to us by Dr. Leitner and Mr. Maloof and Mr. Fox. In Mr. McCallum's case, I think he was treated unfairly. I don't know what the motivation was behind that, but the result is that he has had to pay a price, and the procedures just were not followed which put him in the position that he is in today, which is that he is getting paid, but he is not allowed to do his job. But the other three are all working. They are all at their jobs. They are all there. They have not seen any actual consequences from the retaliation except failure to get promotions, failure to get bonuses. Those are real consequences, but I have to say that I don't think from what I have heard today that I am convinced that there was a wrong done to them. Maybe there was, but I am not convinced of it as I am that there was to Mr. McCallum.

Dr. Leitner, he was critical of the Bush administration and his supervisor was very, very strong in his statements calling him a zealot, and he was asked by his superiors not to work on a particular case so he is off on 60 Minutes and making other appearances, criticizing his agency. I don't know how a Department is supposed to work when you have people within a Department, once a decision is made by those in charge of policy, making critical statements in the public media and then asking, why was I passed over for a bonus when I call the people that I work with to such criticism.

I must say, Mr. Fox, I can't believe that part of your memo where you talk about your view of Communist China is a technical analysis. Maybe if we discuss it further I can come to that point. I know that you all want personal responsibilities, but one of the things that this committee ought to look into is how is a Department supposed to run. If somebody on my staff had a policy disagreement with me and then went on 60 Minutes and said the reason that I voted the way that I did was because of a campaign contribution or whatever, we would fire them. No one seems to get fired for all of these criticisms of what the Department is supposed to do.

On the other hand, we want to make sure that the people who are whistleblowers and have different information to give us have the opportunity to do it.

Mr. McCallum, I think you are in a completely different category. Maybe the others are in your situation, but I am not convinced as I am in your case. I think the Secretary did you a disservice. I am going to talk to him personally, and I want to find out whether he reacted in retaliation or whether it was an overreaction on his part because of other things that were going on. But I think he did a disservice to you and I want to express that to you and express my sincere regret over the situation you face.

I don't think that all these witnesses ought to be lumped together, and I don't think that the case has been made to do that.

Dr. Leitner, Mr. Maloof, and Mr. Fox all have very strongly held views. And they weren't the views of their superiors, and they were doing things that might not have been their jobs, but they are all still there. They are all still working, and maybe that is one of the great things about this country. If you went to Communist China or Russia, dissenters are treated not with the kind of sensitivity that we have in this Nation.

Mr. FOX. Mr. Chairman, may I have the opportunity to respond to the honorable Mr. Waxman's comment?

Mr. WAXMAN. I didn't ask you a question, but please go ahead.

Mr. FOX. Is this an appropriate time now, sir? Sir, with all due respect I believe your comments particularly pertaining to my presence here today are somewhat of a serious mischaracterization, and I would like the opportunity to explain this.

First of all, sir, please let me explain that the format I established for the review of the subsequent arrangements was utilized before and after this situation and this was the only time where Mr. Johnson and I had a disagreement to the point where it was demanded that a rewrite take place.

Over 400 reviews, sir, I reviewed state action and the history of state adherence to existing agreements on behalf of a dozen countries, and there was no objection on the part of the Department of Defense.

In particular, sir, I went through my records yesterday and I pulled out some illustrative reviews. On May 28, 1997, I reviewed state action as part of an export to Armenia, an export I recommended approval of, safe and secure nuclear generative technology to replace deteriorating Russian nuclear reactors. And I considered Armenia's state action in that case. On August 18, 1997, I did that again. On September 11, 1997, I did——

Mr. WAXMAN. Mr. Fox, the red light has come on. I have listened to you and I am open to being convinced otherwise. I am not of the mind after hearing all of this testimony that you or Mr. Maloof or Dr. Leitner are in the same category as Mr. McCallum.

Mr. FOX. On February 22, 1999, I was officially prohibited from any further involvement in the export control area by Mr. David Tarbell, who was formerly the head of the Defense Technology Security Administration and is now Deputy Director of the Defense Threat Reduction Agency, Technology Security Directorate. I was specifically prohibited from any further involvement in that area, either by employment or detail on the basis of his determination.

Mr. BURTON. I yield to Mr. Souder. I would like to have those documents submitted for the record so we can show the consistency of your reports, No. 1.

Mr. FOX. I will be more than happy to, but yesterday I was informed that the request will have to be made through the DOD's General Counsel office.

Mr. BURTON. Then we will make it through the General Counsel's office, but we would like those so we can show the consistency.

You have been discriminated against because of the report that you wrote, where you were told by higher ups that you had to change it 180 degrees. And because you did your job, and you were ordered to change it because you might be fired if you didn't, thereby giving a false impression to this country about the security of the country and about the proliferation of nuclear weapons by the Chinese Communists and they are Communists, then you were penalized. And I don't see how that differs a great deal from some of the others.

Dr. Leitner, of course, came back and had his computer tampered with and his report was changed. That is just one case.

I think we will have other people up here following the same line of questioning in the future and we will have people from the Department of Energy up here and the Department of Defense to explain why these things happened. Mr. Souder.

Mr. SOUDER. I want to thank Mr. Waxman about his willingness to go to the Secretary about Mr. McCallum's case. I also insert in the record support for his position from the various unions of government workers because I believe—because he has been placed on leave, there is a difference in the cases in my opinion, at least the level of the administration overreaction.

Mr. BURTON. Without objection, so ordered.

[The information referred to follows:]

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LAS VEGAS, NV 89107
(702) 259-4410 (702) 259-0010

SECRETARY/TREASURER, RAY
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May 25, 1999

Senator Frank H. Murkowski
Senate Hart Building - 322
Washington, DC 20510

Re: Suspension of Office of Safeguards & Security Director - Mr. E.J. McCallum

Dear Senator Murkowski:

As you are well aware there is more than ongoing debate regarding the Department of Energy's current security problems. Just the past Sunday, May 23, 1999, Secretary of Energy Mr. B. Richardson was on This Week with Sam Donaldson & Cokie Roberts addressing many of the issues and how change can be effected. Of particular interest to us, however, was his comment relative to Mr. E. J. McCallum, Director, Office of Safeguard & Security. Mr. McCallum has been placed on administrative suspension since April 19, 1999 because of purported improprieties regarding classified information. To that end, the National Council of Security Inspectors (NCSI) offers this correspondence.

Just a brief history of what the NCSI is. We are an Association of Protective Force Unions employed under the umbrella of the DOE. We represent the majority of sites within the complex (i.e., Pantex, Mounds, Sandia, Los Alamos, Nevada Test Site, Savannah River Site, Kansas City) just to name a few. Our purpose is to address policies and issues which affect us, the Protective Force side of the house, as a whole. Matters we continue to be involved in, from a quality panel perspective, are firearms safety, firearms, physical fitness, access denial, physical protection systems, and special response teams. We have met often with the DOE hierarchy and communicate even more so. Examples of our correspondence which were of significant importance to us, and should have been the DOE likewise, are attached. Clearly, some of the issues of today were brought to the forefront as early as 1995 - 1996 time frame.

The entire matter of Mr. E.J. McCallum is of particular concern to us as he has been the stalwart within the Headquarters complex trying to let people know a potential problem of security may be

looming. His yearly OSS reports of 1996 and 1997 may have been controversial but, clearly, from our perspective, factual and hard hitting. We openly stated so in our February 10, 1997 letter to the Department. We followed up with the same concurrence to Mr. Mark Paoletta, Chief Counsel for Oversight and Investigations, Committee on Commerce, on May 7, 1997. DOE did graciously meet with us as they reevaluated Mr. McCallum's conclusions and findings. The follow up report of Mr. Joseph Mahaley, Director, Office of Security Affairs (OSA), did not, however, dispel the concern and possible compromise of security within the DOE. Further reports have been conducted since and none portray, or paint, Mr. McCallum as missing the mark, a disgruntled employee, or someone who should be replaced.

The NCSI has been aggressively attacking this latest ruse by DOE to rid themselves of Mr. McCallum. As evidenced by the enclosures, we have contacted many of your colleagues requesting that a fair and impartial investigation be given to Mr. McCallum. From the men who staff and work the security system of DOE, Mr. McCallum was more than accurate on the shortcomings of the Department. He wrote as if he were the Security Police Officer/Security Officer that actually worked the security stations and knew where the pitfalls and weaknesses were. Naturally, he has earned our respect as a man who will speak out against the system ensuring problems are identified and what DOE should do to correct. It has been his outspokenness which has brought him under fire of his superiors. We find him a man with professionalism, integrity, conscience, and a deep commitment to maintain Department of Energy security at the level it should be. As an employee, and a member of the public at large, this is vitally important. Had DOE listened to his earlier reports instead of trying to dissect them, the DOE may well have avoided some of the mess they are currently in.

We have also enclosed other reading which you will find interesting given today's rhetoric of DOE.

We ask that you continue your questioning and fact finding with the vigor you have thus far demonstrated. If we can be of any assistance, please let us know.

Sincerely,

Michael J. Cleghorn
President
NCSI

attachments:
As stated

cc (w/o attachments)
NCSI affiliates
G. McConville, Pres., Intl., UPGWA

D. Shelton, Pres., Intl., IGUA
M. Paoletta, Chief Counsel for Oversight and Investigations

INTERNATIONAL GUARDS UNION OF AMERICA
LOCAL UNION 38
Mike Stumbo
8107 Challenge Dr, Amarillo, Texas 79119
PH. (806) 352-1044 Email: conan@tcac.net

14 May 1999

Michael J Cleghorn
President of NCSI
705 Glen Abbey Circle
Las Vegas, Nev 89107

Dear Mike:

I sent the enclosed letter to President Clinton and our State Senators and Congressman.

Respectfully,

Mike Stumbo
IGUA Local 38
Amarillo, Texas, Pantex Plant

INTERNATIONAL GUARDS UNION OF AMERICA
LOCAL UNION 38
Mike Stumbo
8107 Challenge Dr, Amarillo, Texas 79119
PH. (806) 352-1044 Email: conam@tcas.net

14 May 1999

We urgently request your assistance in investigating the suspension of Mr Ed McCallum Director of Office of Safeguards and Security, Department of Energy.

Mr McCallum has been instrumental in Identifying Security Deficiencies at our Nuclear Weapons facilities. He is one of the few individuals within the DOE community that has maintained high credibility with the (NCSI) National Council Security Inspectors and the (IGUA) International Guards Union of America. Mr McCallum should be commended for having the courage to bring accountability to the Department of Energys security programs. Our organizations consider him a true Patriot and trusted friend. Please insure he recieves a full and fair investigation.

Respectfully,
Mike Stumbo

Mike Stumbo
IGUA Local 38
Amarillo, Texas, Pantex Plant

cc: President Clinton
Mac Thornberry
Larry Combest
Kay Bailey Hutchison
Phil Gramm

United Plant Guard Workers of America
Local 111 P.O. Box 1410 Paducah, Kentucky

May 23 1999

Mr. Eugene McConville
President
United Plant Guard Workers of America
International Union

Dear President McConville,

I am pleased to forward this correspondence from my Congressman, Ed Whitfield. I have also been in contact with the legislative directors for Senator Mitch McConnell (Scott O'Malia) and Senator Jim Bunning (Mike Haywood) about Mr. McCallum's situation. They assure me that they have spoke with D.O.E. about this issue as recently as a meeting on the 19th of May. They further assure me they will follow up on this and keep me informed.

I hope this helps and please do not hesitate to contact me if I or 111 can do anything more.

Fraternally,

John M Driskill
President 111
767 Dry Bridge Rd.
Smithland Ky 42081

Congress of the United States
House of Representatives
Washington, DC 20515–1701

May 18, 1999

Mr. John M. Driskill
President
U.P.G.W.A. Local 111
767 Dry Bridge Road
Smithland, KY 42081

Dear John:

Thank you for your recent letter and enclosure regarding the suspension of Mr. Ed McCallum, former Director of the Office of Safeguards and Security at DOE.

Although I have no authority under the law to overturn a personnel decision rendered by a government agency, I have brought your concerns to the attention of the appropriate DOE officials. Just as soon as I have received a reply, I will be back in touch with you.

Sincerely,

Ed Whitfield
Member of Congress

SW:kl

United Plant Guard Workers of America
Local 111 P. O. Box 1410 Paducah, Kentucky

May 12 1999

Senator Mitch McConnell
Room 120 Russell Building
Washington D.C. 20510

Senator Jim Bunning
818 Hart Building
Washington D.C. 20510

Congressman Ed Whitfield
236 Cannon Building
Washington D.C. 20510-1701

Dear Senator McConnell, Senator Bunning, Congressman Whitfield,

I am writing to make you aware of the suspension of the director of the Office of Safeguards and Security Department of Energy Mr. Ed McCallum. Mr. McCallum has for years been reporting the problems caused by this administration's cut backs in security at D.O.E nuclear facilities. He is motivated not by personal gain but by a deep sense of duty, integrity, patriotism and concern for the safety and security of workers and the public.

Mr. McCallum is being made a scapegoat for the failed security policies of this administration. Local 111 urges you to do everything in your power to not let this man and his department be destroyed, to provide political cover for Clinton administration appointees and it's failures.

I have enclosed copies of letters from our international union president Eugene McConville and from the National Council of Security Inspectors president Mike Cleghorn. I concur with them in this matter.

The country needs men of Mr. McCallum's character safeguarding our facilities. Thank you very much for your attention to this matter.

Very truly yours,

John M Driskill
President 111
767 Dry Bridge Rd.
Smithland Ky 42081
270-928-2621 home
270-441-6246 office

cc: U.P.G.W.A. Inter' Union

N.C.S.I.

International Union,
UNITED PLANT GUARD WORKERS OF AMERICA (UPGWA)
INTERNATIONAL HEADQUARTERS: 25510 Kelly Rd., Roseville, Michigan 48066
TELEPHONE: (810) 772-7250 FAX: (810) 772-9644

EUGENE P. McCONVILLE
President

DAVID L. HICKEY
Secretary/Treasurer

June 3, 1999

Congressman Dan Burton, Chairman
Committee on Government Reform and Oversight
2157 Rayburn House Office Building
Washington, DC 20515

Dear Congressman Burton:

I am extremely pleased to learn that you have the courage to investigate the circumstances surrounding the suspension of the Director of Office of Safeguards and Security, Mr. Ed McCallum.

As a former President of the National Council of Security Inspectors (NCSI) and as the President of the International Union, United Plant Guard Workers of America (UPGWA), I have had the opportunity to meet and work with Mr. McCallum for a number of years regarding Safeguards and Security issues. During that time, I found Mr. McCallum to be honest and straightforward on all issues. I believe his integrity is beyond reproach.

Both the NCSI and UPGWA have attempted over the past few years to alert the Department of Energy (DOE) that, in our opinion, the downsizing was extreme and certainly could have caused a breach of national security. It is unfortunate that there had to be a major breach in security before the appropriate action was taken. Congressman Burton, please don't let politics interfere with a fair investigation in this matter. Don't let Mr. McCallum be used as a scapegoat in order to protect someone's personal agenda.

I would be pleased to be of further assistance in this matter if necessary.

Sincerely,

Eugene P. McConville

Eugene P. McConville
International President

EPM/kb/opeiu42

Cc: The Honorable Henry Waxman
The Honorable Richard Shelby
The Honorable David Bonior
The Honorable John Dingell
M. Cleghorn
D. Shelton

International Union, United Plant Guard Workers of America (UPGWA)
DOE Units Listing

LOCAL	UNIT	CITY	STATE
3	Lockheed Idaho Technology Co. (LITCO) @ Dept. of Energy, Idaho Nat. Eng. Lab Facilities at vario	Idaho Falls	IDAHO
15	MSE, Inc.	Butte	MONTANA
66	USEC Inc. @ Portsmouth Gaseous Diffusion Plant	Portsmouth	OHIO
109	Lockheed Martin	Oak Ridge	TENNESSEE
111	USEC Inc.	Paducah	KENTUCKY
146	Babcock & Wilcox of Ohio	Mismisburg	OHIO
251	Allied Signal Aerospace (Nuclear)	Kansas City	MISSOURI
268	Borg-Warner @ Bryan Mound Site, Big Hill Site, Sulphur Mines Site, West Hackberry Site	Beaumont	TEXAS
330	Wackenhut @ Savannah River	Aiken	SOUTH CAROLINA
502	CBS Corp/Westinghouse @ Waltz Mills (no dues, pending litigation)	Pittsburgh	PENNSYLVANIA
502	CBS Corp/Westinghouse - Bettis Atomic Power Lab, W Mifflin, PA (Nuclear)	Pittsburgh	PENNSYLVANIA
529	Burns @ West Valley Demonstration Project	West Valley	NEW YORK
704	Borg-Warner @ Weeks Island Site, Bayou Choctaw Site, St. James Site, Elmwood Site	Baton Rouge	LOUISIANA
887	EG&G Special Projects	Las Vegas	NEVADA

PRESIDENT, MIKE CLEGHORN
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SECRETARY/TREASURER, RAY DURAN
4912 HOMESTEAD TRAIL NW
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August 28, 1999

Congressman Dan Burton, Chairman
Committee on Government Reform and Oversight
2157 Rayburn House Office Building
Washington, DC 20515

Re: Suspension of DOE Safeguards & Security Director - Mr. E.J. McCallum

Dear Congressman Burton:

It was with great pleasure that we had the opportunity to meet with your staff on June 22, 1999 regarding the above mentioned matter. It is our understanding a resolution amenable to all parties has been reached. Unfortunately, from our perspective, the loss of E.J. McCallum from the DOE will have an immediate and direct impact upon our ability to meet our mission. He will be sorely missed.

It is also our understanding that your committee is to publish its' findings in the near future. The NCSI would be interested in attaining a copy of those transcripts. We would appreciate any assistance to that end.

Again, thanks for your interest and endeavor in investigating this matter.

Sincerely,

Michael J. Cleghorn
President
NCSI

cc: The Honorable Henry Waxman
G. McConville, Pres., Intl., UPGWA
D. Shelton, Pres., Intl., IGUA
NCSI affiliates

Mr. SOUDER. I did want to make an additional comment on Mr. Fox's case because the ranking member read some of the memo and I wanted to put a little bit of context on your memo as I understand it.

In the first part of your memo that was labeled "keep," you basically say it is a fairly straightforward—I think your exact words are relatively simple and direct. United States and China will be afforded annual opportunities to send technical experts to each other's civil reactor sites.

Then there was the section that Mr. Waxman read where you made a very passionate case about marxism which arguably was not technical and I say as a passionate anti-marxist it is not technical, but it sets up in your second to last paragraph you close with, "Accordingly, unless there exists definite meaningful verification provisions and grafted upon this diplomatic agreement, there is no practical way of determining or enforcing adherences to the admittedly peaceful goals enumerated within the proposed reciprocal agreement."

Backing up one paragraph from there, in other words, all of these other paragraphs were predicates to your final conclusion which said, while the agreement looks innocuous, it in fact has to be put in context. You say, in short, we have negotiated a technical exchange agreement concerning critical nuclear technology with an aggressive and ambitious proliferant state unrestrained by political or moral considerations and which discards diplomatic undertakings with studied regularity. Ambiguities and disagreements under this proposed reciprocal arrangement are by its very terms to be resolved by diplomatic means. Therefore, establishing why you have concerns about their ability to follow through unless, in your second to last paragraph, there are meaningful verification provisions, what you are in effect saying in the first part of your memo, while this looks innocuous it in fact is not, and to your concerns which you articulated which can be disagreed about, but it does relate to the substance of your memo which says there must be verification.

Mr. FOX. Coming from an arms control background, I pay particular consideration to the verifiability and the credibility of an agreement, particularly in this instance where we are talking about the sole verifiability and the sole guarantee of the nondiversion of peaceful, dual use technology and expertise to military purposes is bare bones diplomatic representation.

Mr. SOUDER. Because you can't make an analysis about the technology, the technical parts, unless there is a verification and in fact if you just made the assertion at the end, they would have probably said why did you make that assertion?

Mr. FOX. Absolutely. I knew the seriousness of what I was doing and I tried to back up as much as I could. Unfortunately this is concerning intangible technology, the exchange of technical visits. How do you quantify that? How do you quantify the unquantifiable? We spent a great deal of time in Vienna exploring that when I was the DOD representative to the Nuclear Suppliers Group. How do you regulate expertise? That is where you cross that fine line from purely technical considerations into technical

considerations that view things in the context of reality, of real politics. You cannot consider these things in a vacuum.

Mr. SOUDER. And you have disagreements about technical verification, but you shouldn't be subject to threatening, firing, or have a long-term impact occur.

Mr. FOX. This was the only time that this happened. Subsequently and before it never bothered anybody, and subsequently I was indeed elevated to represent DOD overseas for a year until relieved by my agency's reorganization. I ended up serving the Department of Defense as DOD representative to the Nuclear Suppliers Group and Zanger Advisory Committee to the International Atomic Energy Agency until subsequently relieved.

Mr. SOUDER. I thank the chairman for yielding.

Mr. BURTON. Mr. Shays.

Mr. SHAYS. Thank you.

Mr. Fox, early on we looked at your memorandum and in your memorandum you were told that you could keep certain parts, and then there was a long line slashed out. Taking out basically half of your memorandum and inserting in another document. It is your testimony before this committee that what was taken out was your determination that this agreement should not go forward and what was inserted in was the statement that basically said it should go forward; is that correct?

Mr. FOX. Yes, sir.

Mr. SHAYS. So when I read that according—in your memorandum unless there exists a definite meaningful verification provisions graft upon this diplomatic agreement, there is no practical way of determining or forcing adherence to the admittedly peaceful goals enumerated within the agreement. Without such bilateral undertakings or unilateral safeguards, the proposal measurement presents such a significant degree of risk as to be clearly inimicable to the common defense and security. And what was inserted in was the Defense Special Weapons Agency determines that the proposed agreement is not inimicable to the common defense of security of the United States?

Mr. FOX. Yes, sir.

Mr. SHAYS. So you came to one conclusion, and in the end you were asked to come to a totally different conclusion. Whether or not Mr. Waxman likes the supporting document or not, the fact is that you came to a conclusion which you were asked to do; is that not correct?

Mr. FOX. Yes, sir.

Mr. SHAYS. Your job was to come to a conclusion and you did your job?

Mr. FOX. Yes.

Mr. SHAYS. Did you like being the export control coordinator?

Mr. FOX. Even though it added approximately 20 hours a week onto an already full workweek, I was very happy with the job.

Mr. SHAYS. You were relieved of those duties in October 1998 and transferred back to arms control. Why do you believe you were relieved of that duty?

Mr. FOX. On October 1, 1998, the Defense Special Weapons Agency was combined with several other agencies to form the Defense Threat Reduction Agency. Prior to that time, several months

previously, we were encountering significant concern over the retention of any export control responsibilities, particularly in the nuclear area, in our organization. And upon the establishment of the Defense Threat Reduction Agency, it was determined by my senior management of the agency that we would lose that mission.

I should point out, and I make no aspersion's whatsoever, that I had objected to several technology transfers on behalf of the United States national labs to the Russian weapons labs and similar proposed transactions with the Chinese weapons labs and that our present Director is an IPA from a national lab.

Mr. SHAYS. But it is your testimony that if you didn't change your memorandum, that you in fact would be fired?

Mr. FOX. Yes, sir.

Mr. SHAYS. So at the time you were told you better change it or else?

Mr. FOX. Yes, sir.

Mr. SHAYS. Dr. Leitner, it is my understanding that you wrote a memo entitled, subject, China certifications events at the October 24, 1997 meeting, the Subcommittee on Nuclear Export Controls. Can you put that up. Is that a memo that you in fact wrote?

Dr. LEITNER. Yes, sir.

[The information referred to follows:]

MEMO

From: Dr. Peter M. Leither, Defense Technology Security Administration

Subject: **China Certification**: Events at the October 24, 1997, meeting of the Subcommittee on Nuclear Export Controls (SNEC)

On October 24, 1997, while attending the SNEC (Subcommittee on Nuclear Export Control) meeting, my DSWA (Defense Special Weapons Agency) colleague Mr. Jonathan Fox showed me a memo he wrote regarding the PRC as a nuclear proliferant. He was asking for any comments I may have as he was tasked to formulate a DoD position on this subject as part of the Presidential certification process. This process was to yield a decision on whether China is a nuclear proliferant or not. A finding that they are not a proliferant will yield additional trade benefits for China and clear away many obstacles to nuclear cooperation and export licenses.

The Fox memo was a clear, detailed, and well-written analysis of why China **is indeed** a nuclear proliferant. In the Fox memo, DoD's position would be not to grant China any new concessions or benefits. I congratulated Mr. Fox for the logic, quality, excellent research, and honesty of his memo. I had little to offer to improve upon or criticize his effort other than to concur with it.

Within approx. 10 minutes of my reading the memo, a person from Robin DeLaBarre's office came to the SNEC conference room and handed Mr. Fox an urgent telephone message from Mike Johnson (OSD/NPP). Mr. Fox then excused himself from the meeting and went to return the call.

Upon returning about 15 minutes later, Mr. Fox was visibly shaken. I asked what was wrong and we went into the hallway to confer. He said he was just ordered by Johnson to completely rewrite his memo from one stating that China was a nuclear proliferant to one stating they are not – a 180 degree reversal. Mr. Fox related in great detail how he explained to Johnson that such a change would be false, and dishonest. At that point, Fox stated, Johnson threatened to have him fired unless he made the changes. He said that Johnson's manner was very aggressive, abusive, and threatening.

Mr. Fox was quite upset about being blindsided like this. He said that he cannot afford to lose his job – that his family was very dependent upon him and his income and he didn't know what to do. I suggested that he check with his own office to see if they'll support him in doing the honest thing. He called his office and was again ordered to give Policy/Johnson what they want. Again he told them that he is being ordered to write an analysis that he believes to be wrong and dishonest given what he knew about what China has been engaged in. He was told to just do it or find himself in deep trouble.

At this point I asked Dr. Sumner Benson to join us in the hall to discuss the situation. We felt that given Fox's vulnerability to blackmail, by both OSD and his own organization, he was personally better off giving them what they wanted by scrupulously documenting the entire matter.

What followed during the course of the SNEC meeting was a hasty rewrite based upon a marked up copy of his original analysis faxed to him at State by Johnson. These papers bearing handwritten comments and deletions by Johnson were seen by Nicholas Mihnovets (DOD) as well as Benson and myself.

I told Mr. Fox of my concern of other aspects of the China certification that mirrors his experience. For instance, the twisted logic being advanced by the administration to describe the PRC's withdrawal of a proposal to build a reprocessing plant for the Iranian nuclear complex at Bashir as an example of the Chinese being a responsible party in the non-proliferation arena. As I explained to him, the Iranians pulled their offer back only after losing out to the Russians in a head-to-head competition to build the larger nuclear complex for Iran. In my opinion, I told him, if the Russians default or otherwise pull out of the project the PRC will be back in there with both feet immediately. But the State Department and the Administration was pursuing a torturous exercise in logic by attempting to misrepresent the PRC withdrawal of the offer as a strong sign that they are serious about non-proliferation. The whole episode was reported in the press in bits and pieces but was being cast in the most favorable light to support the administrations' desire to certify China as a non-proliferant any way they can.

The timing of this incident was very interesting as it took place on Friday, October 24, 1997, just days before PRC President Jiang Zemin was to arrive in Washington for his Summit meeting with Clinton. This, undoubtedly, was part of the reason for the intense pressure brought to bear on Mr. Fox for the DoD position to be revised that very day.

At the conclusion of the meeting, we informed Robin DeLaBarre , SNEC Chairman of what was going on as well.

My DoD colleagues and I were very disturbed by both the crude and threatening manner in which Mr. Fox was being intimidated and coerced into a reversal of his analytical position and the implications this had on such a critical foreign policy and national security issue. The fact that a distorted memo was to play an important role in falsely certifying to Congress that China is **not** a nuclear proliferator remains a matter, which I believe is, of the highest importance.

Mr. SHAYS. You wrote it to whom?

Dr. LEITNER. Basically for the record. I didn't send it to anybody. I wrote it in order to document the extraordinary event which occurred that day and as I was an eyewitness I knew that it would someday have relevancy to the debate on China.

Mr. SHAYS. Do you have that in front of you?

Dr. LEITNER. Yes.

Mr. SHAYS. Would you read the last paragraph of page 1?

Dr. LEITNER [reads]:

Upon returning 15 minutes later, Mr. Fox was visibly shaken. I asked what was wrong and we went to the hallway to confer. He said he was just ordered by Johnson to completely rewrite his memo from one stating that China was a nuclear proliferant to one stating that they are not. 180 degree reversal. Mr. Fox related in great deal how he explained to Johnson that such a change would be false and dishonest. At that point Fox stated that Johnson threatened to have him fired unless he made the changes. He said that Johnson's manner was very aggressive, abusive and threatening.

Mr. SHAYS. Would you read the next paragraph?

Dr. LEITNER [reads]:

Mr. Fox was quite upset about being blind sided like this. He said that he cannot afford to lose his job and that his family was very dependent upon him and his income. He didn't know what to do.

Mr. SHAYS. Why don't we just stop there. The bottom line to it is this was an event that you thought was serious enough to document and recall?

Dr. LEITNER. Yes.

Mr. SHAYS. Mr. Fox, have you seen this memo that Dr. Leitner is referring to?

Mr. FOX. Yes.

Mr. SHAYS. Is the memo accurate?

Mr. FOX. It is accurate except in one regard. I want to emphasize here that my immediate chain of command up through and including Dr. Charles Gallaway and up through and including Rear Admiral Jackie Allison Barnes, did not pressure me to change my mind or opinion in this regard, and that they were all supportive of me and have continued to be supportive of me. Other than that respect, the memo was accurate.

Mr. SHAYS. So it wasn't your immediate chain of command, it was a bit higher than that, and that was?

Mr. FOX. It was whoever was above Mr. Johnson.

Mr. SHAYS. But Mr. Johnson relayed it?

Mr. FOX. Yes. He relayed it in a manner that indicated that he was not comfortable doing so, but he did so.

Mr. SHAYS. The bottom line for me is that you are here because we subpoenaed you. I haven't seen you on 60 Minutes. You are a new face to me.

Mr. FOX. Yes, sir.

Mr. SHAYS. I think each of you are different and have your own experience. We can't lump you all in one pile. You are human beings and individuals, you are trying to make a living, and frankly you got screwed.

Mr. FOX. Yes, sir, I agree. I want to point out except for this subpoena, I have done everything possible to avoid bringing the disagreements within our organization to light.

The only reason that I have gone outside of the Defense Threat Reduction Agency and have pursued my complaints outside of that is because I have been given no recourse within.

Mr. SHAYS. You owe no one an apology. We make decisions based on what we think is best judgment, and then we in Congress make determinations.

I happen to support trade with China, but I have to tell you I am influenced by what you do, and I want what you do to be accurate.

Mr. FOX. Thank you very much. Sir, I only wish to establish that for the record that I have no ax to grind.

Mr. SHAYS. Very good, thank you, Mr. Chairman.

Mr. BURTON. Mr. Horn.

Mr. HORN. Thank you very much, Mr. Chairman. Just a couple of short questions, then I will get down to the more substantive ones.

Mr. Maloof, in your written statement, you refer a number of times to the front office. Just for the record, could you put the names to who is the front office for you.

Mr. MALOOF. David Tarbell, the Director, Technology Security, and his Deputy, Peter Sullivan.

Mr. HORN. You also noted that you visited the Inspector General's office, and you were just sort of told to go away.

Mr. MALOOF. Yes, sir.

Mr. HORN. Who was telling you to go away?

Mr. MALOOF. I can get that for the record.

Mr. HORN. Get that for the record. Without objection, I would like that for the record.

Mr. MALOOF. Yes, sir.

Mr. HORN. Now, did you ever have a chance to talk to the Inspector General herself?

Mr. MALOOF. No, sir.

Mr. HORN. OK. Let me ask all of you this question. Was there a greater number of export licenses coming before you in one way or the other between January and June 1996 than ordinary, just computers I'm thinking of that, in terms of sales abroad that might worry you one way or the other, was it out of proportion in that period?

Mr. MALOOF. Are you asking me?

Mr. HORN. Yes, out of proportion from say 1995's export licensing going through you for computers.

Mr. MALOOF. It depended—well, given the level that was subsequently required by the Defense Authorization Act, we did not see those computers between the 2,000–7,000 MTOP range, we had no notification. When the legislation was passed, I believe in 1996, we then began at least to get a notification, but for the most part, many of the computers that were going principally to China were not coming through the licensing process whatsoever.

Mr. HORN. So you didn't see anything unusual, that happened to be a Presidential election year, and I'm just curious if that changed things in any way. So you're saying you didn't really see much change in the request for computers being sold abroad.

Mr. MALOOF. Well, that's different. There were always computers at lower thresholds that were coming through, but the higher level

ones, particularly to China, were not seen until the defense authorization act required notification.

Mr. HORN. And when did that take effect?

Mr. MALOOF. It was fiscal year 1998 I believe.

Mr. HORN. OK. You're familiar probably with this report. I don't know if you've had a chance to read it, but the Special Investigative Panel of the President's Foreign Intelligence Advisory Board, otherwise known as the Rudman report, entitled, "Science at Its Best, Security at Its Worst." I don't know if you've a chance to look at it. But I want to read a few things into the record that the Senator and his three colleagues have said: "After review of more than 700 reports and studies, thousands of pages of classified and unclassified source documents, interviews with scores of senior Federal officials and visits to several of the DOE laboratories at the heart of this inquiry, the special investigative panel has concluded the Department of Energy is incapable of reforming itself bureaucratically and culturally in a lasting way, even under an act of the Secretary." A note on page 4 of the foreword, "Our panel has concluded that the Department of Energy when faced with a profound public responsibility has failed."

On page 5, "Meanwhile the Department of Energy with its decentralized structure confusing matrix of crosscutting and overlapping management and shoddy record of accountability has advanced scientific and technical progress, but at the cost of an abominable record of security, with deeply troubling threats to American national security."

And I would like to ask, Colonel McCallum, were you ever asked to appear before that panel?

Mr. MCCALLUM. Yes, Congressman Horn, I was asked. I believe on April 16th.

Mr. HORN. Yes. As I understand it, you were contacted by the executive director of that panel, Randy Deitering; is that correct?

Mr. MCCALLUM. That's correct, sir.

Mr. HORN. Now, as I understand it, you were even scheduled to testify on April 22; is that correct?

Mr. MCCALLUM. That's correct.

Mr. HORN. And then by e-mail you notified Mr., is it pronounced, Mahaley.

Mr. MCCALLUM. Joseph Mahaley.

Mr. HORN. He's the Director of the Office of Security Affairs. And you notified him about the request from the Rudman panel?

Mr. MCCALLUM. That's correct, sir.

Mr. HORN. Did you get any response from him?

Mr. MCCALLUM. I did not.

Mr. HORN. Did you attend that meeting?

Mr. MCCALLUM. No, I did not, sir. I was placed on administrative leave the following Monday. I was called by Mr. Mahaley the next day and asked to delay my appearance in front of Senator Rudman's panel until after the Secretary had a chance to speak with them. I advised Mr. Mahaley that I thought that if the Secretary wanted to appear before me it would be appropriate for the Department to ask that question. Mr. Deitering called me back the next day, asked to delay my meeting with them, and he would call me and reschedule. I haven't heard from him since.

Mr. HORN. He didn't give you any reason why you should be delayed?

Mr. MCCALLUM. He said they were behind. He said that there was the 50-year NATO celebration, and they had a number of people to speak to. He said he would call me back when they rescheduled.

Mr. HORN. Now how about Mr. Mahaley, did he call you again?

Mr. MCCALLUM. He did not, sir.

Mr. HORN. As I understand, he called you again around April 20th, and he asked you then what? This is the point where you might appear before the Rudman panel.

Mr. MCCALLUM. Yes, this is when I was scheduled. Mr. Mahaley asked me to delay my appearance before the panel until after the Secretary had an opportunity to speak with them first.

Mr. HORN. And do you know if the Secretary did speak to them? You were out of it at this point and told not to go there. So was the reason simply not that the Secretary wanted to precede you?

Mr. MCCALLUM. That's what I took from that, sir. We were told in a later meeting with the General Counsel's office that the Secretary had met with them. As a matter of fact, I believe that Mr. Eric Figi, the Deputy General Counsel at the Department said that the Secretary had been successful in having the Senator Rudman's committee not speak to me.

Mr. HORN. I'm told here that this is sort of a coincidence here on the Secretary and you and when you—were you ever talking to them. As I understand it, the Department of Energy was receiving the harshest criticism from the media during this period for its handling of the Wen Ho Lee espionage case at Los Alamos. And you were put on leave about that time or that exact day, weren't you?

Mr. MCCALLUM. It was right about that time, Congressman. I don't remember the exact date that Senator Warner held the hearings.

Mr. HORN. Yes, actually the Secretary was having a few media nightmares that day because the General Accounting Office was testifying before Congress and dusting off 20 years worth of General Accounting Office reports that had warned the Department of Energy about the lack of security at their laboratories, and that's also when you were put on leave. And 3 days after being asked to testify before the Rudman panel, that's when it happened.

So it's sort of convenient timing as I looked at the dates here. And I guess I would ask, do you think that the Secretary tried to dissuade the Rudman panel from hearing your testimony, or do you have any knowledge of that?

Mr. MCCALLUM. The General Counsel told us in a meeting that the Secretary had been successful in dissuading them from hearing my testimony.

Mr. HORN. Let me now move to another thing on the security bit, and the last question I will have. You mentioned I believe to our staff the number of things that were going on in some of these laboratories, and there's—we've got here about 10 examples of security instances involving foreign visitors on Department of Energy sites.

Do you know any of those that were, say, the worst of the lot, and then I would like the others to be put in the record.

Mr. MCCALLUM. The worst of the lot, sir, I can't talk about because they're still classified. Many are being investigated by the Federal Bureau of Investigation. Some that were unclassified, that we wrote a number of reports on within the Department and reported included incidents, one of which I referenced in my testimony, where a Russian visitor took an uncleared laptop computer in a security area at the Savannah River site, and another incident, a Russian visitor was found digging through a dumpster in the vicinity of a security area.

Mr. HORN. Were these incidents in areas such as professors or were they—just what kind of visitors were they?

Mr. MCCALLUM. The one with the computer was a technical visitor who is an expert in nuclear materials controls. The identity of the individual who was found digging through the dumpster, I cannot recall. I haven't had access to files in my office for a few months. But there are a number of incidents like that that have occurred in our laboratories over the last few years with the increase in foreign visitation. These incidents are regularly reported up-line through our operations security program.

Mr. HORN. One is here, foreign national discovered illegally wire tapping a DOE meeting. Mr. Chairman, I would like to put the whole list in the record at this point.

Mr. BURTON. That would be fine, Mr. Horn. And we will put those in the record and ask Mr. McCallum or Lieutenant Colonel McCallum to answer those for the record.

[The information referred to follows:]

Q. What are Ten Examples of Security Incidents Involving Foreign Visitors to DOE Sites?

1. Unresolved continued classified RD exposure to IAEA personnel.

2. Italian national issued a DOE Standard Badge that does not differentiate his foreign national status from that of a U.S. citizen attempted to use the standard badge to gain access to Rocky Flats Environmental Technology Site. The badge was issued by Chicago Operations Office.

3. Russian national attempted to introduce a laptop computer that was equipped with sensors into a Savannah River Site security area. The laptop did not undergo a technical evaluation prior to local approval to enter the equipment.

4. Foreign nationals issued a DOE Standard Badge that does not differentiate citizenship national status attempted to use the standard badge to gain access to a DOE site different from the site where assigned. The badge was issued by Chicago Operations Office - second reported occurrence. During discussions, other sites, including weapons laboratories, reported similar incidences involving CH issued badges.

5. Russian national discovered at site by DOE protective force in a dempsy dumpster searching through trash outside of a DOE laboratory.

6. Israeli national assignee detected working in laboratory facility without access controls. Although the facility did not contain classified information, numerous types of sensitive information (export controlled information, UCNI, and proprietary information) were unprotected. The Israeli was working alone a night. Review of e-mail access by the foreign national revealed 23 pages of Internet addresses throughout the world.

7. IAEA foreign national was arrested for shoplifting. The individual falsely claimed diplomatic immunity and was released by Albuquerque police. The individual then attended meetings the following two days a LANL, but failed to appear on the third day following the incident at a meeting at SNLA. The individual departed without returning an access badge issued him by SNLA.

8. IAEA foreign national detected exiting a security area with a prohibited item (a camera). Camera and film were confiscated and later lost by the protective force.

9. Foreign national discovered illegally wiretapping a DOE meeting regarding contract negotiations.

10. Four employees of a private foreign business concern were granted access authorizations to Confidential-RD. In spite of security recommendations to the contrary, clearances are still in tact for at least one of the foreign nationals.

Mr. BURTON. Did you have any questions, Ms. Chenoweth?

Mrs. CHENOWETH. Thank you, Mr. Chairman. It's been a long day, hasn't it, gentlemen? I think I'm the last of the Mohicans here.

Mr. BURTON. There's one more Mohican.

Mrs. CHENOWETH. One more Mohican. I'm struck. Last week I read where whistleblowers in the Department of Interior received a reward of $350,000 for whistleblowing, plus one-third of a settlement with oil companies in the future. It strikes quite a contrast to what I'm hearing today. Mr. Maloof.

Mr. MALOOF. Yes, ma'am.

Mrs. CHENOWETH. I have some questions for you. You described in your statement that once the satellite waiver case broke in April 1998, the staff was instructed not to discuss the case, even though it was the subject of a grand jury investigation.

That is the case, isn't it? The staff was instructed not to discuss the case.

Mr. MALOOF. Correct.

Mrs. CHENOWETH. Are you aware of any pending Hughes or Loral export license applications from that time period?

Mr. MALOOF. Yes.

Mrs. CHENOWETH. Was this information considered in the review of these applications?

Mr. MALOOF. From my vantage point, I don't think so, and that's why I was a little concerned about it. We have had—I to this day don't know the context of the Justice Department's investigation, where they're heading with it, but if there was in fact wrongdoing, then we—as I said in my testimony we've had precedent to put a hold on any further proceedings until it could be clarified.

And I even had a customs agent admit to me that continuing approvals were actually harming their case. And I once again informed our management about that.

Mrs. CHENOWETH. What is DOD policy regarding the review of applications from a company that is the target of a pending criminal investigation?

Mr. MALOOF. Well, generally we wait for an indictment. We have imposed penalties in the past on companies by instituting DOD foreign acquisition regulations and in order to—but first we want to be sure that we're on solid ground. We've also had cases, at least two that come to mind, where it was so egregious that we immediately imposed suspension of all licenses. In fact, just last week on another case, we did just that to the tune of some 70 license applications.

Mrs. CHENOWETH. Well, Mr. Maloof, was that policy followed in this case?

Mr. MALOOF. Not in my opinion.

Mrs. CHENOWETH. Did you attempt to find out why the policy was different in this case?

Mr. MALOOF. Oh, yes.

Mrs. CHENOWETH. What did you find?

Mr. MALOOF. I found a lot of circumstantial evidence particularly reading outside, and when you put them in context with what was occurring at the time, it began to paint a picture. Again, from my standpoint right now, I can only speculate, although I harbor a lot of personal opinions about it, but in my opinion, there was increas-

ing favoritism, there was a rush to push these—given the timeframe in which they occurred, there was a push to look at these license applications from a political standpoint.

I know our management had visited the facilities a number of times. We were told previously to expedite those applications. This was—what I said earlier was not the first time and the fact, too, that the Chinese were concerned about acquisition of technologies, and, again, given that time period, we saw that rush.

And if we looked at the time of the waivers that did occur and you compare them with when there were visiting Chinese, put all of that information together, it paints a composite that you can't ignore, given the information that you're looking at at the time and you have to put it into a context.

And that's part of our job, to look at both classified and unclassified information and bring it together to form a picture, that's part of our role that we do in terms of analysis. And when we bring that to the attention of our management, we expect them to take it seriously and admittedly, I never received responses.

Mrs. CHENOWETH. Well, in fact, you've testified that you were contacted by a Deputy Assistant Secretary public affairs for information regarding the satellite waiver case. Wasn't it unusual for someone of his level to contact you or your division regarding a matter of this magnitude?

Mr. MALOOF. I thought it was unusual. And it sent a signal to me at least that something was wrong here, that there was something going on, in effect bypassing the process, and I have to say, in many cases, I have expressed opinions about cases. And I have been overturned on them.

I don't go raising Cain about things, but in this case I did inform our management, and I began to wonder why this Assistant Secretary was coming to me with this question. It was part of that picture of things—of information we were receiving and had already had.

Mrs. CHENOWETH. Well, when he told you that the Secretary was blindsided by the events surrounding the story, what was your reaction? I mean, you know, didn't you think it was strange that the Secretary didn't already know about this?

Mr. MALOOF. I personally did. And I know in previous administrations we have informed the Secretary of these kinds of cases. The priority of technology transfer was considered particularly by Mr. Weinberger to be held paramount. I was very surprised. And, in fact, we have not had an export license case actually go to the Secretary during this administration.

Mrs. CHENOWETH. Thank you, Mr. Maloof. I have a lot more questions for you, but if the chairman would indulge me I would like to just submit them in writing.

Mr. BURTON. Without objection so ordered. And we will ask you gentlemen to respond to the questions that we will submit to you in writing.

And this last Mohican, would you have any time to yield to me, maybe 10 seconds or 15?

Mr. SOUDER. Yes, I will try to go fast in my others.

Mr. BURTON. This is the last of the Mohicans, Representative Souder.

Mr. SOUDER. The Hoosier Mohican.

A couple of things, one is that Mr. Waxman earlier raised the very difficult question about how we react with certain members of our staff, and we've dealt with this in the Travel Office in this committee where we heard it was no big deal, but in fact they were reinstated, but these are nuclear secrets. This isn't a matter of policy disagreements, as I understand, Mr. Maloof, you are Chief of Technology Security Operations, Defense Threat Reduction Agency. Dr. Leitner is Senior Strategic Trade Advisor for Defense Threat Reduction Agency, Mr. Fox is a Defense Special Weapons Agency Arms Controls Specialist. Colonel McCallum is Director, Office of Safeguards and Security.

If you all are having concerns about security, this isn't just a policy disagreement. And we also have hindsight being valuable here, the fact that you were right, that in fact the secrets did get out through visitors, that we in fact have had security lapses. And looking at this in hindsight, it should get us to look more carefully at the whistleblowing options, how to have this and, at the very least, revoke the type of procedures that have been taken.

But there was another thing that intrigued me, Dr. Leitner, and you made this point several times, and in your testimony, you developed it further about the fact that the United States doesn't have a modeling simulation and research branch that would be dedicated to conducting cumulative and technical impact assessments. That came up quite frankly in Mr. Fox's memo. That's the same type of thing. It looks kind of so this isn't any big deal in the trade question.

You also bring the Department of Defense in for some scathing reviews, and actually were fairly kind to the Commerce Department. But I wanted to read something from the Cox report that I found—one of the more disturbing things—I mean it's about every page is disturbing, this was in volume 3, page 74, 75, and 76 in this unanimous report, it talks about—Dr. Leitner, in your testimony, you say that 1995 we had these computers suddenly jump up from 2 to 7,000 that could be moving.

[The information referred to follows:]

105TH CONGRESS, 2d Session | HOUSE OF REPRESENTATIVES | REPORT 105-851

REPORT

OF THE

SELECT COMMITTEE ON U.S. NATIONAL SECURITY AND MILITARY/COMMERCIAL CONCERNS WITH THE PEOPLE'S REPUBLIC OF CHINA

SUBMITTED BY
MR. COX OF CALIFORNIA, CHAIRMAN

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Various U.S. Government analyses have raised concerns about the risk of the diversion of sensitive U.S. technologies not only to the PRC, but to third countries as well through Hong Kong because of the PRC's known use of Hong Kong to obtain sensitive technology.[246] Some controlled dual-use technologies can be exported from the United States to Hong Kong license-free, even though they have military applications that the PRC would find attractive for its military modernization efforts.

The Select Committee has seen indications that a sizeable number of Hong Kong enterprises serve as cover for PRC intelligence services, including the MSS. Therefore, it is likely that over time, these could provide the PRC with a much greater capability to target U.S. interests in Hong Kong.

U.S. Customs officials also concur that transshipment through Hong Kong is a common PRC tactic for the illegal transfer of technology.[247]

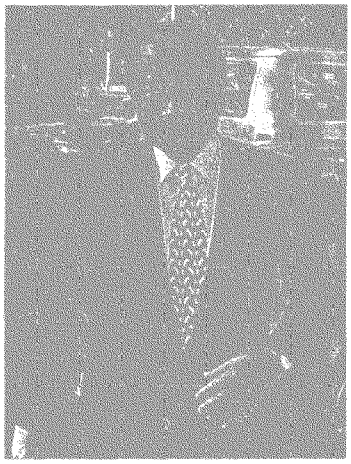
John Huang, Classified U.S. Intelligence, and the PRC

In late 1993, the U.S. Department of Commerce hired John Huang as the Principal Deputy Assistant Secretary of Commerce for International Economic Policy.[248]

Prior to starting at the Department of Commerce, Huang had been the Lippo Group's principal executive in the United States. Lippo's principal partner in the PRC is China Resources (Holdings) Co., a PRC-owned corporation based in Hong Kong.[249]

According to Nicholas Eftimiades, a Defense Intelligence Agency analyst writing in his personal capacity, and Thomas R. Hampson, an investigator hired by the Senate Governmental Affairs Committee, China Resources is "an agent of espionage, economic, military, and political."[250]

China Resources is also one of several PRC companies (including China Aerospace Corporation) that share a controlling interest in Asia Pacific Mobile Telecommunications Satellite Co., Ltd (APMT).[251] The PRC-controlled APMT is preparing to use China Great Wall Industry Corporation to launch a constellation of Hughes satellites on PRC rockets.[252] The launches scheduled to date have required



Associated Press

In late 1993, John Huang was appointed to be the Clinton administration's Principal Deputy Assistant Secretary of Commerce for International Economic Policy. He had been the chief U.S. executive for the Lippo Group, a partner of the PRC-owned China Resources Company.

Commerce Department approval and presidential waivers of the Tiananmen Square sanctions.[253]

While at the Department of Commerce, Huang was provided with a wealth of classified material pertaining to the PRC, Taiwan, and other parts of Asia. He had a Top Secret clearance, but declined suggestions by his superiors that he increase that clearance to the Sensitive Compartmented Information (SCI) level (the level held by his predecessor).[254]

Between October 1994 and November 1995, Huang received 37 briefings from a representative of the Office of Intelligence Liaison at the Department of Commerce.[255] While Huang's predecessor was briefed weekly, Huang received approximately 2.5 briefings per month.[256]

The vast majority of Huang's briefings focused on the PRC and Taiwan, including "raw intelligence" that disclosed the sources and methods of collection used by the U.S. intelligence community.[257] The Office of Intelligence Liaison representatives indicated that Huang was not permitted to keep or take notes on raw intelligence reports and did not ask many questions or otherwise aggressively seek to expand the scope of his briefings.[258]

During the briefings, Huang reviewed and commented on raw intelligence reports about the PRC. Huang also signed receipts to retain finished intelligence products. The classified finished intelligence that Huang received during his tenure at Commerce included PRC economic and banking issues, technology transfer, polit-

ical developments in the PRC, and the Chinese Communist Party leadership. Huang commented on or kept copies of materials on these topics.

Huang was also given access by the Office of Intelligence Liaison to diplomatic cables classified at the Confidential or Secret level.[259] Specifically, 25 to 100 classified cables were set aside for Huang each day.[260]

No record exists as to the substance of the cables that were reviewed by Huang.[261] Huang could have upgraded the level of the cable traffic made available to him to include Top Secret information, but never did so.[262]

Huang also had access to the intelligence reading room at the Commerce Department, as well as to classified materials sent to his supervisor, Charles Meissner,[263] who had a higher level clearance.[264] The three Office of Intelligence Liaison representatives who were interviewed by the Senate Committee on Governmental Affairs indicated that they were not personally aware of any instance in which Huang mishandled or divulged classified information.[265]

Huang maintained contact with representatives of the Lippo Group while he was at the Department of Commerce. During the 18 months that he was at Commerce, Huang called Lippo Bank 232 times, in addition to 29 calls or faxes to Lippo Headquarters in Indonesia. Huang also contacted Lippo consultant Maeley Tom on 61 occasions during the same period. Huang's records show 72 calls to Lippo joint venture partner C. Joseph Giroir.[266]

China Resources (Holdings) Co., a PRC-owned corporation that is the Lippo Group's principal partner in the PRC, has been identified as "an agent of espionage, economic, military, and political.

During his tenure at the Commerce Department, Huang used a visitor's office across the street at the Washington, D.C. branch of Stephens Inc., an Arkansas-based brokerage firm with "significant business ties to the Lippo Group." [267] Stephens employees indicated that these visits were short in duration.[268] Huang used this office "two, three times a week" most weeks, making telephone calls and "regularly" receiving faxes and packages addressed to him.[269]

No one at the Commerce Department, including Huang's secretary, knew of this additional office.[270]

Huang met with PRC Embassy officials in Washington, D.C. on at least nine occasions. Six of these meetings were at the PRC Embassy.[271] When informed of these contacts, Jeffrey Garten, the Department of Commerce Under Secretary for Trade Administration, was "taken aback" to learn that Huang ever dealt with anyone at the PRC Embassy.[272] The purpose of the contacts is unknown.

On December 1, 1998, the Select Committee served Huang with a subpoena through his attorney. On December 3, 1998, Huang's attorney indicated that Huang would only testify before the Select Committee pursuant to a grant of immunity.[273] The Select Committee declined to immunize Huang from prosecution, and Huang refused to appear before the Select Committee, invoking his Fifth Amendment rights.

Mr. SOUDER. And interesting in that time period, I think the President changed it in October 1995, John Huang was actually the person who was in charge. He was a Deputy Assistant Secretary, not in charge, as Deputy Assistant Secretary for International Economic Policy, and in the report, which I'm going to read, so I'm not accused of editorializing, it says "During the 18 months he was at Commerce, Huang called the Lippo Bank 232 times," which had been implicated with China Aerospace and other front organizations, "in addition to 29 calls or faxes to Lippo Headquarters," and this isn't a Republican report by the way, this is a unanimous Republican-Democrat report. "Huang also contacted Lippo consultant Maeley Tom on 61 occasions during the same period. Huang's records show 72 calls to Lippo joint venture partner C. Joseph Giroir."

Now, on page 75 is my favorite line, it says leading up to this, "During his tenure at the Commerce Department," while he was overseeing in the area of the technology transfer, that you all have been raising concerns about, it says he "used a visitor's office across the street at the Washington, DC branch of Stephens, Inc.," an Arkansas based brokerage firm with, "significant business ties to the Lippo Group." Stephens employees indicated that these visits were short in duration. Huang used this office "two, three times a week most weeks, making telephone calls and 'regularly' receiving faxes and packages addressed to him," and then my favorite line, "No one at the Commerce Department, including Huang's secretary, knew of this additional office."

Now, this ought to just panic quite frankly most Americans and those of you in the security business because you're seeing this banged around between the different departments and the security arrangements. And here we have a person who unbeknownst even to his office is working in cahoots with another group, we don't know whether secrets he was getting in the briefings that you all were—classified briefings. This company has been linked with the very companies that you all were sending warnings up about.

And then, Dr. Leitner, you say, but the Commerce Department was good compared to the Defense Department, and you scared me to death. Would you——

Dr. LEITNER. I didn't mean the Commerce Department is good. I mean that the greatest degree of change that has occured in the export control process has occurred in the Defense Department. The Defense Department traditionally has been the conservative anchor of the process who looked at national security and is indeed charged with making the national security argument.

It has, and I testified about this repeatedly, it has failed its mission, it does not—it has not safeguarded national security to the extent it should. The Commerce Department is basically blithering along and doing the same thing it always has done. The fact that they had Mr. Huang there is something of great concern. I never had any contact with him, and I don't know what he was doing, what kind of secret offices he had.

But for the aspect that I saw of the process, the greatest degree of change came in the realm of the Defense Department, and it came when a whole bunch of people arrived at the beginning of the

administration who represented the antithesis of export control. When they came in, they inherited the process.

They were given power over a program which they didn't support even during the height of the cold war. So that's where the real big change came, along with spying, you can talk about the role of Ron Brown as well being so activist and all the rumors about him. But that's a separate issue, I think, from the argument I have been making.

Mr. SOUDER. I thank you all. And my concern is that history will show you've been correct, which is good for all of you. History will show that you've been correct, which is bad for the country. I yield back the balance of my time.

Mr. BURTON. Thank you very much, Representative Souder. I would just like to add for the record one statement. I will read it quickly, and then we will move to put the committee in executive session. On May 21, 1999, Colonel McCallum's counsel, David Tripp, met with Mary Ann Sullivan, the Department of Energy General Counsel, who is a political appointee, to discuss McCallum's options. She said that McCallum had made things difficult for them by talking to Congress. According to McCallum's attorney, Sullivan said that if DOE was not able to find McCallum in violation of rules regarding classified information, that another way would be found to remove him. Sullivan has refused to be interviewed by Government Reform Committee staff.

We will talk to Ms. Sullivan at some point in the future about this.

I now move that the committee proceed in executive session. All those in favor of the motion will signify by saying aye. All those opposed signify by saying no. In the opinion of the chair, the ayes have it, and the motion is agreed to.

So we will proceed in executive session since we will be discussing sensitive information with the witness Dr. Henson. Therefore, I will ask the committee to reconvene in a swept room, room 2247, and only Members and committee staff should attend the executive session and only those who have proper clearance. Thank you very much.

[Whereupon, at 4:15 p.m., the committee proceeded to further business in executive session.]

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